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A PRACTICAL EPITOME
OF THE
DEATH DUTIES

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A Practical Epitome
OF THE
DEATH DUTIES

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PREFACE

THE many changes in the law relating to Death Duties since this book first appeared have made a second edition imperative. In incorporating these changes, opportunity has been taken to revise the whole text, which in many places has been completely rewritten. It is hoped that the usefulness of the book has been thereby enhanced. In particular, the addition of the text of the relevant statutes, etc., made possible by curtailing the chapters on Legacy and Succession Duties (recently abolished), should contribute to that end. The continued and increasing flow of amending legislation makes a practical guide to the subject—succinct, yet sufficiently detailed to meet the needs of the ordinary practitioner—more than ever essential.

I am indebted to the Board of Inland Revenue for permission to publish this new edition, which does not, however, have any official authority or bind the Revenue in any way.

I gratefully acknowledge the valuable help and advice given me on certain aspects of the subject in which they have specialised by my colleagues, Mr. W. M. Brown, Mr. E. L. Fairweather and Mr. R. A. Grieve (of the Estate Duty Office, Edinburgh). I am also most grateful to Mr. C. D. Hughes, also of this Office, for relieving me of the burden of proof-reading and of compiling the Index and Tables of Statutes and Cases.

D. H.

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TABLE OF ABBREVIATIONS

To economise space the following abbreviations have been used throughout this work :—

A.D. Account Duty
E.D. Estate Duty
F.A. Finance Act
L.D. Legacy Duty
L.D.A. Legacy Duty Act

P.D. Probate Duty
S.D. Succession Duty
S.D.A. Succession Duty Act
S.E.D. Settlement Estate Duty

BUDGET RESOLUTIONS ***1951***

As this book goes to press Resolutions have been introduced in the House of Commons dealing with (a) the payment of duty under mistake of law, and (b) tax-free securities. The resulting statutory provisions, when passed, should be noted at pp. 151 and 165 respectively.

DEATH DUTIES

INTRODUCTION

BRITISH Death Duties, like most things British, are the result of a long historical process, in this case of piecemeal legislation. From 1796 to 1949 they could be divided into two main classes—mutation duties, charged on property conceived as changing hands on death, and acquisition duties, charged on benefits acquired on death, the rates of the former varying according to the value of the property and those of the latter according to the relationship between beneficiary and benefactor. The Finance Act, 1949, by abolishing Legacy Duty and Succession Duty, has left Estate Duty as the only British Death Duty exigible in connection with modern death—a mutation duty which takes no account of family relationships. Arrears of Legacy and Succession Duties, due before that Act, are still payable, so that the taxpayer and his professional adviser will still make acquaintance with these duties for a short time to come. There are also the Probate, Account, Temporary Estate and Settlement Estate Duties, which have been obsolete for much longer but which are still occasionally met with, *e.g.*, as chargeable on accretions to the estates of persons long since dead. In certain cases property chargeable with Estate Duty is entitled to an allowance for one or other of these duties paid on that property on some earlier death.

In most cases the Death Duty statutes make no distinction between England and Scotland. It is said that “they are usually framed by draftsmen but little conversant with the forms and requirements of conveyancing in Scotland and that the phraseology which they employ is apt to be directed by the law of England. . . . In such circumstances the Scottish court must do

its best to give effect to the meaning of the statute, not by treating English law terms as unnecessary symbols, but as terms which, although not terms of art in Scotland, may be taken as words of ordinary popular signification".¹

¹ *Per* Lord Dunedin in *Ld. Adv. v. Moray (Countess)*, [1905] A. C. 531, at p. 544, on the F. A., 1894; as to the S. D. A. see *Saltoun (Lord) v. Adv. Gen.* 1860, 3 Macq. 659, at p. 671, *per* Lord Campbell.

CHAPTER I

PROPERTY PASSING AND BENEFITS ARISING

1. *Imposition of Estate Duty*

E.D. was first imposed by the F. A., 1894, s. 1, as a duty to be levied and paid on the principal value of all property which “passes” on the death of any person on or after August 2, 1894.

S. 2 (1) of that Act provided that property passing on death should “be deemed to include” four specific kinds of property there mentioned.¹

These two provisions form the basis of the charge of E.D., but their scope has been considerably extended by subsequent statutes. They are considered separately in detail below.

It has been said that “the scheme of the Act is intended to include not only every case of property passing by death, but . . . every benefit accruing by death even though the property from which the benefit is derived does not itself pass”.²

It has also been said that “If the case falls within s. 1 it cannot also come within s. 2. The two sections are mutually exclusive”.³ With great respect, it is suggested that this statement is too sweeping, for obviously there are some cases of property which come within the terms of both provisions, *e.g.*, the deceased’s own “free” estate passes on his death and is also property of which he is competent to dispose and therefore comes under s. 2 (1) (a). The position is, it is submitted, better met by the words of Lord Haldane in *Nevill v. I. R. Commrs.*⁴ : “S. 2 combines definitions of such property [*i.e.*, property passing] with the extension of the application of the principle laid down in s. 1 to cases which are not in reality cases of changing hands on death at all”. It has now, however, been

¹ See below, pp. 15 ff.

² *Per* Vaughan Williams, J., in *Att.-Gen. v. Wood*, [1897] 2 Q. B. 102, at p. 107, but this is not exhaustive.

³ *Per* Lord Macnaghten in *Cowley (Earl) v. I. R. Commrs.*, [1899] A. C. 198, at p. 212, approved by Lord Davey, *ibid.*, p. 218.

⁴ [1924] A. C. 385, at p. 389: though he had agreed with Lord Macnaghten in the earlier case of *Att.-Gen. v. Milne*, [1914] A. C. 765, at p. 769. See also *Att.-Gen. v. Dobree*, [1900] 1 Q. B. 442, *per* Channell, J., at p. 450; *Adamson v. Att.-Gen.*, [1933] A. C. 257, *per* Lord Wright at p. 287; and *Att.-Gen. v. Lloyds Bank, Ltd.*, [1935] A. C. 382, at p. 393.

held ^{4a} that if duty is payable under s. 1 the Revenue cannot enforce a larger claim under s. 2 (1) (b). In any case, it is clear that the E.D. charged under both sections is the same duty.⁵ Subject to this, if liability arises under more than one head the Revenue is entitled to duty on the larger basis, if there is any difference in the extent of the charge.⁶

The sections of the F. A., 1894, subsequent to s. 2 (1) and the later Finance Acts speak, generally, of "property passing", without further reference to "property deemed to pass".⁷ Obviously, therefore, all such references must be read as if the latter phrase were added thereto. In this way all the provisions as to liability, exemption, aggregation, valuation, accountability, etc., are seen to apply equally to property passing under s. 1 and that deemed to pass under s. 2 (1), and this reading has received judicial confirmation as regards aggregation in *Re Payne, Poplett v. Att.-Gen.*⁸, and as regards valuation in *Strathcona (Lord) v. I. R. Commrs.*⁹ Dicta to the contrary in *Att.-Gen. v. Milne*¹⁰ must be read in the light of the particular provisions of s. 5 (1) of the F. A., 1894, imposing S.E.D., which was there in point. Cases coming within s. 2 (1) need not satisfy the requirements of the definition of "property passing" in s. 22 (1) (l) of the F. A., 1894, in order to be included under the phrase "property passing" in later sections of the F. A., 1894, or in later Acts, for s. 22 (1) (l) is not exhaustive.¹¹

2. Property passing under the F. A., 1894, s. 1

The question whether property passes on death is one of fact in each case. It is not enough that property has been settled so as to pass presumptively on a future death, if in fact, through some subsequent transaction, it does not pass on that death, when it occurs.¹² As to what constitutes a passing, it

^{4a} *Re Duke of Norfolk, Public Trustee v. C. I. R.*, [1950] 1 All E. R. 664; [1950] Ch. 467, C. A.

⁵ *Re Haig, Harris v. Drayton* (1922), 66 Rep. C. I. R. 16.

⁶ *Speyer Bros. v. I. R. Commrs.*, [1908] A. C. 92, at p. 95.

⁷ A phrase not actually found in s. 2 (1), but used in other enactments. "Passing" and "deemed to pass" are found together in both s. 12 (2) of the F. A., 1900, and s. 57 of the F. (1909-10) A., 1910.

⁸ [1939] Ch. 865; [1940] Ch. 576, C. A.

⁹ 1929 S. L. T. 629, at p. 633, *per* Lord Sands.

¹⁰ [1914] A. C. 765.

¹¹ See below, p. 6 (note that s. 22 (1) (l) says "includes").

¹² *Att.-Gen. v. Beech*, [1899] A. C. 53, at p. 56.

has been said that "property passing by death . . . has been used as language to be understood by ordinary people and not in a technical sense"¹³; and in *Nevill v. I. R. Commrs.*¹⁴ Lord Haldane said: "'Passes' may be taken as meaning 'changes hands'". Perhaps the best judicial definition is that of Lord Parker in *Att.-Gen. v. Milne*¹⁵: "The expression property passing on the death is not further defined, but is evidently used to denote some actual change in the title or possession of the property as a whole which takes place at the death". "Title" for this purpose means the right by virtue of which the beneficiaries claim, before and after the death, not the disposition under which the property devolves.¹⁶ Lord Parker's definition was echoed and expanded by Clauson, L.J., in *Brookes v. Att.-Gen.*¹⁷: "Attention must be focussed upon a comparison between the persons beneficially interested in the fund the moment before the relevant death and the persons so interested the moment after the death, and upon the question whether the death effected an alteration in the rights as distinguished from merely removing the possibility of an alteration". Here "persons beneficially interested" and "alteration in the rights" are respectively equivalent to "possession" and "title" in Lord Parker's definition.¹⁸ Thus if property is settled on A for life with remainder to B absolutely or for life, there will be a passing of the property within the meaning of s. 1 on the death of A, provided that no further manipulation of the property has meanwhile occurred. Where property so passes it is immaterial what interest A had during his life or what interest B takes on his death.¹⁹ It is the property itself which passes, if at all, not

¹³ *Ibid.*, at 79 L. T. 566.

¹⁴ [1924] A. C. 385, at p. 389.

¹⁵ [1914] A. C. 765, at p. 779.

¹⁶ Cf. *De Trafford v. Att.-Gen.*, [1935] A. C. 280, at p. 290.

¹⁷ [1939] Ch. 343, C. A., at p. 367. The first part of Clauson, L.J.'s statement is itself an echo of Lord Russell of Killowen's in *Scott v. I. R. Commrs.*, [1937] A. C. 174, at p. 183. In practice, duty is not claimed where there is a change in the beneficiaries' title only, and not in possession or beneficial interest, e.g., where property is settled on A during the joint lives of A and B, remainder to the survivor, and B dies first (cf. *Re Townsend*, [1901] 2 K. B. 331, and see p. 78, below).

¹⁸ In *Att.-Gen. v. Milne*, [1914] A. C. 765, 779.

¹⁹ Per Lord Macnaghten in *Cowley (Earl) v. I. R. Commrs.*, [1899] A. C. 198, at p. 212, Maugham, J., in *Re Northcliffe, Arnholz v. Hudson*, [1929] 1 Ch. 327, at p. 331, Lord Parker in *Att.-Gen. v. Milne*, [1914] A. C. 765, at p. 779, and Lord Russell of Killowen in *Christie v. Ld. Adv.*, [1936] A. C. 569, at p. 576.

the interests of the beneficiaries. Thus, unless the property dealt with by the instrument in question is itself a limited interest under some other title, the *capital* of the property is liable to E.D. as passing on the death.²⁰ "What passes must be ascertained at the moment of passing without reference to any events before or afterwards".²¹

S. 22 (1) (l) of the Act provides that

"The expression 'property passing on the death' includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression 'on the death' includes 'at a period ascertainable only by reference to the death'."

This provision is in terms an expansion of s. 2 (1) of the Act, where the expression "property passing on the death" is found, and applies, for example, to benefits arising within the meaning of s. 2 (1) (d)²²; but it clearly has reference also to s. 1, which alone deals with property actually passing. Its object is to prevent evasion by the easy device of a settlement of property on a person for his life and a fixed period after his death. It is not too happily phrased. In terms it charges with duty on the death of the deceased all property which at that date can be said to be either certain or merely likely to "pass" after any interval, but in practice duty is not claimed where the property does not in fact pass. Difficulties may therefore arise as to aggregation in cases where it cannot be ascertained within a reasonable period whether the property in question will be liable to duty or not. "After any interval" must mean an interval connected with the death, for obviously all events not simultaneous are separated by some interval. And it is necessary that the property should pass or be deemed to pass within the meaning of ss. 1 and 2 (1) on the date in question; it is not sufficient that a benefit to someone other than the deceased starts at such date merely because the deceased has died meanwhile. Thus if A in 1940 purchases an annuity starting in 1960

²⁰ See below, p. 13, as to limited interests.

²¹ *Per* Rigby, L.J., in *Re Cowley's (Earl) Estates*, [1898] 1 Q. B. 355. C. A., at p. 377.

²² See below, p. 37.

and payable to him and his wife and to the survivor, the death of A in 1950 will not give a claim under this heading notwithstanding that it increases the benefit taken by his widow if she survives till 1960. "At a period ascertainable only by reference to the death" means "at a *date* ascertainable", etc. It might be argued that as the subsection does not say "at a period ascertainable by reference to the death only" it would apply to a passing on an event determined by reference to the death *and* to some other factor, *e.g.*, at a date to be fixed by trustees, but within two and five years after the death; but this is doubtful and it is submitted that the provision cannot be read as if the word "only" were omitted, even if it is misplaced.

In practice a variety of more complicated cases is met with and it is not always easy to say whether there is a passing within the meaning of s. 1. The following special types of case may be said to be established in the sense indicated against each:—

(a) *There is no passing within s. 1 where all that happens on the death is that interests in property which had already passed to a person or persons become indefeasible in the same person or persons.* In *Adamson v. Att.-Gen.*²³ a fund was settled by A more than three years before his death for his children as he should appoint and in default to accumulate during his life and on his death capital and accumulations to his children then living in certain shares. No appointment was made, and the House of Lords held that there was no passing under s. 1.²⁴ The basis of this decision was explained by the same tribunal in two later cases to be that "There was no changing hands. Therefore the fund in question did not pass on the death".²⁵ "The beneficial interest in the whole fund passed" [*i.e.*, on the execution of the settlement] "out of the settlor to the children, whose interest was the same both before and after the death of the settlor, subject only to this, that a possibility of defeasance came to an end with the death and that the

²³ [1933] A. C. 257.

²⁴ There was a claim under s. 2 (1) (d) of the Act, see below, p. 86 ff.

²⁵ *Scott v. I. R. Commrs.*, [1937] A. C. 174, at p. 183, *per* Lord Russell of Killowen.

cesser of that possibility of defeasance did not constitute a passing".²⁶ In the second of these cases, *Att.-Gen. v. Lloyds Bank, Ltd.*,²⁶ the facts were substantially the same as in *Adamson*, for, although the children's shares were directed to be held on trust for them for their respective lives with remainder to their issue, no child had issue at the settlor's death and so the rule in *Lassence v. Tierney*²⁷ applied: so that each child took an absolute interest liable to defeasance: it was again held that there was no passing under s. 1. In both *Adamson* and *Lloyds Bank* it was, however, held that the benefits arising on the settlor's death were liable to E.D. under s. 2 (1) (d) of the Act.

(b) *But where a trust for accumulation ceases on the death and the property and accumulations are then held on continuing trusts for beneficiaries who have conflicting interests there is a passing under s. 1.* Thus if property is settled on trust to accumulate during the life of A and on his death capital and accumulations for B for life with remainder to C, there is a passing under s. 1 of the property and accumulations on the death of A. The *Adamson* principle cannot apply for the property cannot be said to have passed to B and C on the execution of the settlement, since their interests conflict: during A's life the income is being accumulated for the benefit of B and C (for B will take the income of such income), but after A's death it is applicable for B only; therefore the property and accumulations pass on A's death from B and C to B alone (C's interest being then postponed till B's death) and this is a passing within s. 1. This principle was admitted by the parties in *Att.-Gen. v. Dickinson*²⁸, where the question of aggregation alone was at issue, but it was authoritatively decided by the Court of Appeal in *Re Hodson's Settlement, Brookes v. Att.-Gen.*²⁹ and *Westminster Bank, Ltd. v. Att.-Gen.*³⁰; which also showed that in such cases the accumulations are liable to E.D. as passing on the death which brings accumulation to an end, and that such accumulations are aggregable with the other property passing on the death. In the former of these two cases

²⁶ *Att.-Gen. v. Lloyds Bank, Ltd.*, [1935] A. C. 382, per Lord Tomlin, at p. 397.

²⁷ (1849) 1 Mac. & G. 551.

²⁸ [1937] 2 K. B. 574.

²⁹ [1939] Ch. 343, C. A.

³⁰ [1939] Ch. 610, C. A.

Clauson, L.J., said³¹: "While the beneficiaries are no doubt the same, before as after the death, but the death brings one set of trusts to an end and shifts the beneficial interest in the income to the possession of one who (though no doubt previously a contingent beneficiary) had no beneficial interest in possession before the death, there is a 'passing' within s. 1 of the Act". In the latter case Clauson, L.J., said: "A clear change in the beneficial possession of the property as a whole took place. . . . Not only did the life-interests of the children of [A] become interests in possession, but the interests of the next generation (children of the children of [A]) were changed in that the accruing income was no longer to be rolled up for their benefit as an addition to capital, but the right to this income passed to their respective parents for their respective lives".³²

(c) *There is a passing within s. 1 on the cesser by death of a discretionary trust, whether or not accompanied by a trust or power to accumulate surplus income, even if the person entitled on the death is an object of the discretionary trust.* In *Scott v. I. R. Commrs.*³³ property was settled (in events) on A for life, remainder to B for life, remainder to C for life, remainder to D in tail. Subsequently A bought C's life-interest and settled it on a discretionary trust for C, his wife and issue and others entitled in remainder under the first settlement, with a direction to accumulate unapplied income. On the death of C, who survived A and B, the House of Lords held that the corpus of the property passed under s. 1 from the indeterminate class of persons who were objects of the discretionary trust as a whole to D, notwithstanding that D was among such persons, for no one object of the discretionary trust had a legal right to any income of the property.

It should be noted that the second settlement dealt only with the life-interest under the first and that therefore there was a passing in any case under the first settlement, unless the parties' argument was accepted (which it was not) that under the combined operation of the two deeds D was the only person beneficially entitled before and after C's death, since the persons who

³¹ At p. 368.

³² At p. 617.

³³ [1937] A. C. 174.

might benefit during the discretionary trust had no beneficial interest. Nevertheless the judgments in this case fully established the proposition set out above.³⁴ *Burrell v. Att.-Gen.*³⁵ was a clearer case. There property was given by will (in events) during the life of A to apply any part of the income to him or for the benefit of him, his wife and issue and the persons presumptively entitled on his death, and on A's death on trust during the life of B (A's son) for B or for the benefit of him, his wife and issue and persons entitled on his death; the surplus income during both lives being applicable in reduction of capital charges. During A's life six people were interested in the income (*viz.*, A, B, A's two other children C and D, A's wife and A's grandchild); on A's death three people became interested (B, B's wife, and C, B having no issue then, though he did later).³⁶ The Court of Appeal held that on A's death the corpus of the settled property was deemed to pass under s. 2 (1) (b) of the F. A., 1894, but the House of Lords held that it passed within the meaning of s. 1. Lord Russell of Killowen said³⁷: "The mere fact that a person who becomes entitled to the beneficial enjoyment of property on a death, has already before that death been beneficially interested in the property does not prevent the property passing under s. 1. . . . In the present case the beneficial interest of the first group ended with [A's] death and thereupon the beneficial interest of the second group arose under a different trust". Thus E.D. is payable on a death which brings a discretionary trust to an end, even if another discretionary trust then arises. In the latter case it is necessary that there should be two distinct discretionary trusts, before as compared with after the death, distinct in the sense that the two groups composing the objects of the respective trusts are distinguished by different qualifications, though it is immaterial that some individuals may appear in both groups.³⁸ In extreme cases

³⁴ See especially [1935] Ch. 246, at pp. 265-6, *per* Maugham, L.J., and [1937] A. C. 174, at p. 182, *per* Lord Russell of Killowen (and cf. *Brookes v. Att.-Gen.*, above, p. 5).

³⁵ (1985), 153 L. T. 393, C. A.; [1937] A. C. 286 (the House of Lords judgment confirmed that of the Divisional Court).

³⁶ The interests of the heir-at-law and of the next-of-kin, who were entitled subject to the discretionary benefits, were declared by Lord Russell of Killowen to be "microscopic" ([1937] A. C., at p. 299).

³⁷ At [1937] A. C. p. 301.

³⁸ *Ibid.*, at pp. 301-2.

there may be difficulty in deciding whether the qualifications are sufficiently different to constitute a passing. If there is a discretionary trust primarily for the benefit of the same group of persons before and after the death, the fact that surplus income may be payable to different persons before as compared with after the death will not by itself constitute a passing. But if there is a discretionary trust during the life of X for the benefit of A and B, and on X's death the property goes equally to A and B, whether absolutely or for their lives, there is a passing on X's death, even if during his life the income had in fact been paid equally to A and B; for as no object of the discretionary trust has an interest in any definable slice of the property³⁹ the principle in *Re Townsend*⁴⁰ cannot give exemption. It may be, however, that the Courts would hesitate to enforce a claim which had only technical merit.

In cases under headings (b) and (c) there is a passing of the accumulations as well as of the property, unless the remainderman on the deceased's death takes absolutely and there was no power to resort to them in the deceased's life (when the *Adamson* principle applies, as was the case in *Scott v. I. R. Commrs.*, above).

(d) *But there is no claim for E.D. under any heading on a death during the continuance of a discretionary trust.* The considerations referred to immediately above, which create liability on the cesser of a discretionary trust, apply to prevent liability on a death during its continuance. Thus if there is such a trust for A, B and C during their joint lives and the lives and life of the survivors and survivor, there is no E.D. claim on the death of the first to die, for there is no passing of the property as a whole nor is there any cesser of a quantifiable interest. Nor, if there is a discretion as to how much income shall be applied, with a direction to accumulate any surplus, will any claim arise on the death of the second. It will make no difference that on any death there is a change in the person or persons in whom the discretion is vested (*e.g.*, a discretionary trust for A, B and C or any of them as A during his life and thereafter

³⁹ *Per* Lord Russell of Killowen in *Scott v. I. R. Commrs.*, [1937] A. C. 174, at p. 182 (approving Maugham, L.J., at [1935] Ch. 246, at p. 265) and Greer, L.J., in *Att.-Gen. v. Farrell*, [1931] 1 K. B. 81, at p. 100.

⁴⁰ [1901] 2 K. B. 331. See p. 78, below.

as B shall direct : there is no claim on A's death during the continuance of the discretionary trust). But if the trust is absolute, without a direction to accumulate surplus income, so that the whole income has to be applied in each year, the discretionary trust ceases on the death of the last but one of the possible beneficiaries, for the last survivor then becomes entitled as of right to the whole income. Accordingly, such death gives rise to a passing of the whole property. In all these cases it is assumed that a genuine discretionary trust exists. If the trust entitles the beneficiaries to certain shares of income until the trustees or some other person exercises a contrary discretion there will generally be a claim (under s. 2 (1) (b) of the F.A., 1894) on the death of any beneficiary before the exercise of such discretion. This is a question of construction. Similarly there is no passing on the death of a potential life-tenant during the continuance of an imperative trust to accumulate the whole income.⁴¹ And if a discretionary trust continues after the death, there is generally no claim for E.D. merely because a trust to accumulate surplus income ceases on that death. Thus if property is settled by X on discretionary trusts for A, B and C during their joint lives and the lives and life of the survivors and survivor, with a direction to accumulate surplus income, the mere fact that the trust for accumulation ceases on the death of the settlor during the continuance of the discretionary trust does not constitute a passing under s. 1. In some such cases there may be a claim on the fund accumulated at the settlor's death, e.g., if the income from such accumulated fund is not itself subject to the discretionary trust which continues after the settlor's death, but devolves on his estate under a resulting trust during the life of some other person, when the *Hodson* principle will apply to the accumulations.

(e) *There is a passing under s. 1 where a discretionary trust arises on a death.* In such cases there will generally have been a life-interest preceding the discretionary trust in the person on whose death the latter arises (or in some other person for his life), so that there will be a clear passing (and also a cesser of

⁴¹ But where the accumulations are payable absolutely at intervals to a succession of potential life-tenants there is a passing on the death of each (*Haldane v. Eckford*, [1948] W. N. 349, C. A.); the fact that the income is distributable at much longer intervals than usual is immaterial.

an interest), but if any doubt remains the decision in *Burrell v. Att.-Gen.*⁴² is authority, for as there is a passing on the cesser of one discretionary trust and the arising of another such, *a fortiori* where the interest preceding the death is not discretionary. Similarly where a trust to accumulate for one of the prescribed periods arises on a death.

There must of necessity be many border-line cases where it is difficult to say whether a claim arises. Thus, if an annuity is given by will to A for life and subject thereto the income is to be accumulated, and on A's death capital and accumulations go absolutely to persons to be then ascertained, it would appear that there is no passing on A's death of the surplus capital not required to produce the annuity. The case of infants presents special difficulties, but it may be said that the Revenue does not claim E.D. under any heading on the mere cesser of a discretionary power of maintenance, strictly so called (statutory or otherwise), on the death of an infant⁴³; on the other hand, a claim which would otherwise arise on the cesser by death of a true discretionary trust (*a fortiori* where there is an actual passing) would not be defeated merely by the fact that the death in question was that of an infant.⁴⁴

It may be mentioned that there is a passing under s. 1 where property is settled on A for life, remainder to B, notwithstanding the presence of an over-riding power of revocation or appointment vested in C, or in C and another jointly, or in C with the consent of another, if such power is not exercised.

The Passing of Limited Interests.—S. 1 taxes the property which passes; therefore, if only a limited interest has been dealt with by the instrument under which the passing occurs it is only that interest which is liable.

(a) *Life Interests.*—Thus if A settles his life-interest under another instrument on B for life, remainder to C, on B's death in A's lifetime E.D. is payable on the life-interest of A, valued as at B's death, as passing under A's settlement to C.

⁴² Above, p. 10.

⁴³ See *Att.-Gen. v. Power*, [1906] 2 Ir. R. 272, in which s. 5 (3) of the F. A., 1894, came into play (below, p. 53, but see now F. A., 1938, s. 48). In this connection reference may be made to the cases of *Re Turner's Will Trusts*, *District Bank, Ltd. v. Turner*, [1937] Ch. 15., and *Ld. Adv. v. Muir's Trustees* (1942), 21 A. T. C. 204.

⁴⁴ Cf. *Att.-Gen. v. Coole*, [1921] 3 K. B. 607 (below, p. 55).

(b) *Estates pur autre vie*.—The same principle applies here, but there may be special complications arising from the fact that the property as a whole may pass on the death as well as the limited interest.

(i) Where the deceased person was merely the owner of an estate *pur autre vie*, E.D. is payable on the latter as part of his own free estate.

(ii) Where the estate *pur autre vie* is settled by the owner and passes on his or another's death under such settlement E.D. is payable on the interest valued as at the death in question, on the same principle as a settlement of a life-interest as above.

(iii) Where the deceased is life-tenant in possession under a disposition and has acquired a *pur autre vie* interest through the acquisition of the life-interest of a subsequent life-tenant, who survives him, E.D. is payable on the corpus of the property passing on his death under the disposition and no further E.D. is payable in respect of his *pur autre vie* interest as part of his estate (see F. A., 1894, s. 7 (10) ⁴⁵).

(iv) But if a life-tenant acquires the life-interest of a prior life-tenant under the same disposition and dies before such prior life-tenant E.D. is payable only on his *pur autre vie* interest as part of his free estate, his own life-interest having failed by reason of his death before it became an interest in possession, so that s. 5 (3) of the F. A., 1894,⁴⁶ applies to exempt the corpus.

(c) *Continuing Annuities*.—Where an annuity is payable (a) to a person for life and on his death to another for life, or (b) to two or more persons for their joint lives and to the survivors and survivor for lives and life, and the annuitants have no right against any property for the satisfaction of their annuities (*e.g.*, where an annuity is purchased or is secured only by personal covenant), what passes on the death of each (except the last survivor, when nothing passes and no duty is payable), is the annuity itself, or a share thereof, for the remainder of its continuance. E.D. is accordingly payable on the value at the annuitant's death of such annuity or share thereof. No allowance is given for the duty paid on the death of one such annuitant against the duty payable on the later death of another

⁴⁵ See below, p. 80.

⁴⁶ See below, p. 53.

annuitant.⁴⁷ This principle extends to an annuity given by will or other disposition, even if secured on other property, provided that the annuity is created as a single entity.⁴⁸

There may be special cases (other than those of annuities) where E.D. may be payable on the value of an interest conceived as carved out of settled property and as passing as an entity on death, instead of on the corpus of the settled property itself, but these are rare. Thus in *Re Cassel, Public Trustee v. Mountbatten*⁴⁹ leasehold property was settled by will on beneficiaries in succession with a direction that outgoings should be paid out of residue. On the death of a life-tenant it was held that E.D. was payable under s. 1 on the value only, ascertained actuarially, of the benefit as to outgoings. Normally, where property is given to several persons jointly with benefit of survivorship what passes on the death of each is an aliquot share of the property.⁵⁰

3. *Property deemed to pass under the F. A., 1894, s. 2 (1)*

(i) *Property of which the deceased was competent to dispose at his death.*

S. 2 (1) of the F. A., 1894, enacts:—

“Property passing on the death of the deceased shall be deemed to include the following, that is to say:—(a) Property of which the deceased was at the time of his death⁵¹ competent to dispose.”

The phrase “competent to dispose”, which is to be construed in a wide and non-technical sense,⁵² is defined (though not exhaustively⁵²) in s. 22 (2) (a) of the Act as importing such an estate, interest or general power as would, if the owner

⁴⁷ Except that a payment in such circumstances exempts from E.D. on the share of the same annuity passing on the subsequent death of the spouse of the first annuitant under F. A., 1894, s. 5 (2), and F. A., 1914, s. 14 (a).

⁴⁸ *Re Norfolk's (Duke) Will Trusts, Public Trustee v. I. R. Commrs.*, [1950] 1 All E. R. 664, C. A.; [1950] Ch. 467, C. A.

⁴⁹ [1927] 2 Ch. 275.

⁵⁰ See *Christie v. Ld. Adv.*, [1936] A. C. 569, in which, and in *Re Northcliffe, Arnholz v. Hudson*, [1929] 1 Ch. 327, the *Cassel Case* was specifically stated to be of a very special nature.

⁵¹ This includes “up to the time of his death”, as for example in the case of joint tenants: see *Att.-Gen. v. Quixley* (1929) 141 L. T. 288, and the reference in s. 22 (2) (a) to an “instrument inter vivos”.

⁵² *Re Parsons, Parsons v. Att.-Gen.*, [1943] Ch. 12, at p. 15.

were *sui juris*, enable him to dispose of the property in question, "general power" here including every power (*i.e.*, capacity⁵³) or authority enabling its holder to appoint or dispose of property as he thinks fit. By s. 22 (2) (c) money which a person has a general power to charge on property is for this purpose property of which he has power to dispose.

In most cases where the deceased is competent to dispose there will be a concurrent liability under some other heading. Examples of cases falling under s. 2 (1) (a) only are:—

(a) In *Att.-Gen. v. Quialey*⁵⁴ a death gratuity payable to the representatives of a deceased schoolteacher was held to be property of which he was competent to dispose and liable to E.D. notwithstanding that an assignment thereof was void. Rowlatt, J., remarked that competency to dispose included "the general authority which a person has by direction in his will to dispose of property to his executors or administrators".⁵⁵

(b) Property which passes by virtue of s. 33 of the Wills Act, 1837, to the persons entitled under the will or intestacy of a child or grandchild of the testator who predeceases leaving issue is an accretion to the estate of the child or grandchild and liable to E.D. in that estate as property of which he was competent to dispose.⁵⁶ But if a testator provides that if a legatee predeceases him the legacy shall go to the legatee's executors, etc., this is a direct gift to the person entitled under the will or intestacy of the legatee and E.D. is not payable in the latter's estate in respect of the legacy.⁵⁷

(c) A power of revocation or appointment in a disposition, provided it is sole, and unlimited in object, creates competency to dispose with the consequent liability to E.D.,⁵⁸ even if unexercised. The same applies to a power to appoint to anyone

⁵³ *Re Penrose, Penrose v. Penrose*. [1933] Ch. 793, at p. 808.

⁵⁴ (1929), 98 L. J. K. B. 315, 652, C. A.; 141 L. T. 288. But gratuities not payable as of right, *e.g.*, to deceased Civil Servants, are not liable to E.D., nor are moneys paid under the Fatal Accidents Act, 1846 (Lord Campbell's Act), Employers' Liability Act, 1880, Workmen's Compensation Acts and Carriage by Air Act, 1932, National Insurance Act, 1946, National Insurance (Industrial Injuries) Act, 1946, or *ex gratia* payments. Otherwise unliquidated damages with a right of action or under the Law Reform (Miscellaneous Provisions) Act, 1934, are liable.

⁵⁵ At 98 L. J. K. B. p. 317 and 141 L. T. p. 289.

⁵⁶ *Re Scott*, [1901] 1 K. B. 228.

⁵⁷ *Ld. Adv. v. Bogie*, [1894] A. C. 83; *Att.-Gen. v. Loyd*, [1895] 1 Q. B. 496.

⁵⁸ See *I. R. v. Gunning's Trustees*, 1907 S. C. 800.

but oneself, to a power to appoint to anyone except certain persons provided the appointor and his executors are not excluded, and to a special power of which the appointor is himself one of the objects.⁵⁹ But a power of revocation with the consent of another does not make a person competent to dispose.

(d) Where a man places real or leasehold property in the joint names of himself and another so that immediate advancement is presumed or proved, the other joint owner is competent to dispose of his undivided moiety and on his death first E.D. is payable thereon under s. 2 (1) (a).

(e) It is doubtful whether an interest in expectancy⁶⁰ or a policy of insurance or Savings Certificates, forming part of the deceased's free estate, pass on his death under s. 1, in which case the only ground of liability to E.D. is s. 2 (1) (a).

(f) Imperfect gifts which the deceased has attempted to make and which are perfected by the appointment of the donee as executor or administrator, or one of such,⁶¹ are property of which the deceased is competent to dispose.

Where a man transferred shares to another subject to an option to repurchase at less than the full price, it was judicially held that he was not competent to dispose at his death of the option, which died with him.⁶² Whether he was competent to dispose of the shares was not before the Court.

A life-tenant who has power to draw on capital is competent to dispose,⁶³ but if his power is limited to his needs for maintenance, etc., he is not competent to dispose of any balance remaining at his death.⁶⁴

E.D. is not claimed under s. 2 (1) (a) on the death of (i) a person having a general power of appointment over property which is subject to a life-interest in another if he predeceases that other without exercising the power; (ii) a person having a general power of appointment by will, if he had released it in

⁵⁹ *Re Penrose, Penrose v. Penrose*, [1933] Ch. 793, which also shows that it is immaterial that the competency to dispose can only be achieved by several successive steps.

⁶⁰ Cf. Lord Macnaghten in *I. R. Commrs. v. Priestley*, [1901] A. C. 208, at p. 213.

⁶¹ *Strong v. Bird* (1874), L. R. 18 Eq. 315; *Re James, James v. James*, [1935] Ch. 449. If the attempted gift is not perfected it remains part of the deceased's free estate (see below, pp. 27, 117).

⁶² *Re Tawse, Tawse's Trustees v. Ld. Adv.*, 1943 S. C. 125.

⁶³ *Re Richards, Uglow v. Richards*, [1902] 1 Ch. 76.

⁶⁴ *Re Pedrotti's Will* (1859), 27 Beav. 573.

his life; (iii) a joint tenant of property in reversion at his death; or (iv) a tenant in tail in remainder who dies without dis-entailing.⁶⁵

As regards Scottish entails, s. 23 (15) of the F. A., 1894, enacts that

“An institute or heir of entail in possession of an entailed estate shall whether sui juris or not be deemed for the purposes of this Act to be a person competent to dispose of such estate.”

It should be noted that where the deceased effects a policy of insurance for the benefit of another person, such other person acquires no legal right under the policy unless either (a) the policy was effected under one of the Married Women's Property Acts, or (b) such other person, whether a volunteer or not, was a party to the insurance contract, or (c) the policy was assigned to him, or (d) an express trust, apart from the mere effecting of the policy in his name, was declared in his favour.⁶⁶ Otherwise the policy forms part of the deceased's free estate. In suitable cases, however, it may be that the deceased was acting as agent for the person entitled under the policy, in which case the policy was not effected by the former. The principle laid down in *Re Engelbach* does not apply to Scotland.⁶⁷ As regards payments, other than under policies of assurance, agreed to be made to persons not parties to the agreement, see *Re Schebsman*.⁶⁸

Competency to dispose is important, less perhaps as a positive heading of liability than as preventing the operation of certain exemptions from duty, which will be considered in their place later.

(ii) *Cesser of interest.*

The next class of property which, by s. 2 (1) of the F. A.,

⁶⁵ The last case is within s. 22 (2) (a), but it is conceded that s. 5 (3) of the Act applies.

⁶⁶ *Cleaver v. Mutual Reserve Fund Life Association*, [1892] 1 Q. B. 147; *Re Engelbach's Estate, Tibbetts v. Engelbach*, [1924] 2 Ch. 348.

⁶⁷ *Carmichael v. Carmichael's Executor*, 1920 S. C. (H. L.) 195. If both parties to the contract have shown an intention of irrevocability the intended beneficiary has a *jus quæsitum tertio*; but if the donor is entitled under the terms of the policy to surrender it during the minority of the beneficiary, the value of the policy forms part of the donor's free estate if he dies during such minority.

⁶⁸ [1943] Ch. 83, C. A.

1894, is deemed to be included in property passing on the death is:—

“(b) Property in which the deceased or any other person had an interest ceasing on the death⁶⁹ of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest;”

It was said in *I. R. v. Maclachlan*⁷⁰ that “s. 2 (1) (b) is not rightly understood until you read s. 7 (7) (b)” of the Act. S. 7 (7) is as follows:—

“The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

“(a) if the interest extended to the whole income of the property, be the principal value of that property; and

“(b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.”

It has accordingly been held judicially that it is the benefit to the *property* which is the test of liability to E.D. under s. 2 (1) (b),⁷¹ and not the interest to which some persons succeeds on the death.⁷² It is immaterial that the interest might have ceased on some event other than death, *e.g.*, marriage or bankruptcy, provided that it does in fact cease on the death.⁷³

S. 2 (1) (b) is particularly appropriate to the cesser of an annuity and it may be useful in this connection to summarise the rights of annuitants, on which the claims for duty ultimately depend.

(a) “An annuitant, whose annuity is payable out of a testator’s estate, and who is therefore interested in the whole

⁶⁹ Here “on the death” may have to be construed in the light of s. 22 (1) (l) of the Act (see p. 6, above).

⁷⁰ 1899, 36 S. L. R. 727, at p. 731, col. 1, *per* Lord Robertson.

⁷¹ *Per* Lord Adam in *I. R. v. Maclachlan* (above), at p. 732, col. 1, and Lush, J., in *Att.-Gen. v. Watson*, [1917] 2 K. B. 427, at p. 432.

⁷² *Per* Grantham, J., in *Att.-Gen. v. Penrhyn* (1900), 83 L. T. 103, at p. 105, col. 1.

⁷³ See *Att.-Gen. v. Coole*, [1921] 3 K. B. 607, and F. A., 1940, s. 58 (6).

estate, is necessarily also interested in all the parts which compose the whole".⁷⁴

(b) Where an annuity is given by will the residuary legatee can only take on the terms of providing for payment of the annuity in full⁷⁵ even if funds are set apart and they prove insufficient, unless the residue is expressly exonerated.⁷⁶

(c) Where an annuity is given *simpliciter*, it is a charge on the whole estate, both corpus and income.⁷⁷

(d) In case (c) above, and also where an annuity is specifically charged on corpus or income, the annuitant is entitled to such security as will make it practically certain that the annuity will be paid in full.⁷⁸

(e) Where an annuity is given without direction as to security and the residue is settled, the annuity, as between life-tenant and remaindermen of residue, is payable out of the income of the residue, and if necessary out of capital.⁷⁹

(f) Where an annuity was directed by will to be paid out of the income of residue the court ordered a fund to be set aside, and it was said that if necessary the annuitant had a right to resort to the capital of the fund.⁸⁰

(g) Where an annuitant dies before any provision has been made for payment of the annuity and before completion of the administration of the estate, he has an interest in the estate "to which [he] was entitled to have recourse"⁸¹, and E.D. is payable in respect of the capital producing the annuity.

(h) Where an annuity is given *simpliciter* and the residuary legatee takes absolutely and pays the annuity out of his own pocket after the completion of the administration, there may be no property in which the annuitant has an interest and therefore no claim. But if the annuitant has released his annuity under the will for one of the same amount payable by the residuary legatee, s. 43 of the F. A., 1940, will give a claim.⁸²

⁷⁴ *Per* Lord Russell of Killowen in *Skinner v. Att.-Gen.*, [1940] A. C. 350, at p. 358: in which case it was also said that the word "interest" in s. 2 (1) (b) "has a popular rather than a technical meaning" (at [1939] Ch. 140).

⁷⁵ *Re Coller's Deed Trusts*, *Coller v. Coller*, [1939] Ch. 277.

⁷⁶ *Re Evans & Bettell's Contract*, [1910] 2 Ch. 438.

⁷⁷ *Wroughton v. Colquhoun* (1847), 1 De G. & Sm. 36.

⁷⁸ *Re Parry, Scott v. Leak* (1889), 42 Ch. D. 570.

⁷⁹ *Re Grant, Walker v. Martineau* (1883), 52 L. J. Ch. 552.

⁸⁰ *Harbin v. Masterman*, [1896] 1 Ch. 351.

⁸¹ *Per* Lush, J., in *Att.-Gen. v. Watson*, [1917] 2 K. B. 427, at p. 430.

⁸² See below, pp. 43-46.

And if the residuary legatee predeceases the annuitant and settles his estate the annuitant, whatever his rights under his own testator's will, has rights under the will of the residuary legatee which will support a claim.⁸³

(i) Where property is bequeathed to a person subject to his paying an annuity to another the annuity will generally be merely a personal obligation on the legatee without any charge on the property⁸⁴, in which case no duty is payable under s. 2 (1) (b) on its cesser.

Where an annuity is secured by personal covenant only there can be no claim on its cesser, for there is no property in which the annuitant had an interest. But if the covenantor predeceases the annuitant and charges the annuity on specific property or on residue or the income thereof s. 2 (1) (b) gives a claim. In the absence of such charge the annuitant is in the position of an ordinary creditor, so that no claim under s. 2 (1) (b) arises.⁸⁵

There is generally no claim on the cesser of an annuity which has been purchased under a power or direction in a will.

E.D. is not normally claimed under s. 2 (1) (b) where an annuity *arises* on a death, payable out of property already settled upon, or in the absolute ownership of, a person other than the deceased, on the view that such other person's interest did not "cease" to the extent of the annuity, but was only temporarily suspended.⁸⁶

In all the other cases, where a claim arises, E.D. is payable on the capital set apart, if such is the case, under s. 7 (7) (a). Where no capital is set apart, or if the annuity was being paid out of a capital set apart for it and other annuities, duty is payable on the basis of s. 7 (7) (b) on "the principal value of an addition to the property equal to the income to which

⁸³ Cf. *Re Darby, Russell v. MacGregor*, [1939] Ch. 905, C. A.; [1939] W. N. 223.

⁸⁴ *Re Lester, Lester v. Lester*, [1942] Ch. 324; 1 All E. R. 646.

⁸⁵ *Re Dawson, Arathoon v. Dawson*, [1906] 2 Ch. 211; see also *Re Perkins, Brown v. Perkins*, [1907] 2 Ch. 596, and *Re Poyser, Landon v. Poyser*, [1910] 2 Ch. 444. In such a case, if a life-tenant under the covenantor's will dies in the annuitant's life, E.D. is claimed on the capital of the property passing with deduction of the value only of the annuity.

⁸⁶ If the annuity was provided by the deceased there will be a claim under s. 2 (1) (d).

the interest extended". This phrase is elliptical, "equal to" meaning "equivalent or corresponding to"⁸⁷ and the addition being one of the same kind of property. In popular language duty is payable on the "slice" of the property required to produce the annuity. Thus if a fund valued on the cesser of an annuity of £100 at £6,000 produces a total income of £200, E.D. is payable on the death of the annuitant on $\frac{100}{200}$ of £6,000 = £3,000.

Where the annuity is from its nature of a fluctuating amount (e.g., such a sum as will bring the annuitant's income from all sources to £x) the "slice" should be calculated on the amount of the annuity at the annuitant's death. Where the amount of the annuity is left to the discretion of the trustees or others (whether with or without a prescribed "ceiling") it is doubtful whether ss. 2 (1) (b) and 7 (7) (b) create liability to E.D. on the annuitant's death. Each such case must be considered on its merits, having regard to the wording of the instrument.

S. 2 (1) (b) is not confined to annuities, but applies, for example, to the cesser of a life-interest in a share of an estate⁸⁸ or in an estate which is itself subject to an outstanding annuity. In all such cases E.D. is payable on the basis prescribed in s. 7 (7).

Where two or more persons have a right of residence in freehold or leasehold property, jointly and to the survivors, etc., there is no passing of a share of the property under s. 1 or cesser of interest under s. 2 (1) (b) which can be measured in terms of s. 7 (7) (b). But this only applies where a mere *personal* right of residence is conferred. In such a case the fact that such persons have powers of sale, etc., under the Settled Land Act, 1925⁸⁹, is apparently immaterial, as such powers can only be exercised by the group as a whole.⁹⁰ E.D. will normally only be payable where the deceased is given powers which would enable him, acting alone, to acquire rent from the property or income from its proceeds, or a share thereof.

⁸⁷ *Per* Lord Clyde in *Ld. Adv. v. Fotheringham*, 1924, 61 S. L. R. 159, at p. 165, col. 1. *Per* Palles, C.B., in *Att.-Gen. v. Power*, [1906] 2 Ir. R. 272, at p. 277, the subsection should read "property the income of which is equal to the income to which the interest extended".

⁸⁸ In this case the claim may also arise under s. 1 (see above, p. 4 ff.).

⁸⁹ See, e.g., *Re Acklom, Oakeshott v. Hawkins*, [1929] 1 Ch. 195.

⁹⁰ See s. 19 (2) of the Act.

Similarly, no claim arises under s. 1 or s. 2 (1) (b) on the cesser of a joint right of user of furniture. But in either case a claim may arise under another heading if the house or furniture was settled by the deceased.

(iii) *Property formerly liable to Account Duty.*

The third class of property which, by s. 2 (1) of the F.A. 1894, is deemed to be included in property passing on the death, is :—

“(c) Property which would be required on the death of the deceased to be included in an account under section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by section eleven of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real as well as personal property, and the words ‘voluntary’ and ‘voluntarily’ and a reference to a ‘volunteer’ were omitted therefrom.”

The property required to be included in an account by s. 38 of the Customs and Inland Revenue Act, 1881 (*i.e.*, which was liable to Account Duty before the F. A., 1894), is :—

S. 38 (2): “(a) Any property taken as a *donatio mortis causa* made by any person dying on or after the first day of June [1881] or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been bona fide made three months⁹¹ before the death of the deceased.

“(b) Any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes

⁹¹ Amended to twelve months by s. 11 (1) of the Customs and I. R. A., 1889 (see below, p. 24), to three years by s. 59 (1) of the F. (1909-10) A., 1910, and to five years by s. 47 of, and 11th Schedule, Part I, to, the F. A., 1946— but not, as to deaths before April 10, 1948, to gifts before April 10, 1943. .

or accrues by survivorship on his death to such other person.

“(c) Any property passing under any past or future voluntary settlement made by any person dying on or after such date by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property.”

The relevant part of s. 11 of the Customs and Inland Revenue Act, 1889, is :—

S. 11 (1): “Sub-section two of section thirty-eight of the Customs and Inland Revenue Act, 1881, is hereby amended as follows :—

“The description of property marked (a) shall be read as if the word ‘twelve’⁹² were substituted for the word ‘three’ therein, and the said description of property shall include property taken under any gift, whenever made, of which property bona fide possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise :

“The description of property marked (b) shall be construed as if the expression ‘to be transferred to or vested in himself and any other person’ included also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone or in concert, or by arrangement, with any other person :

“The description of property marked (c) shall be construed as if the expression ‘voluntary settlement’.

⁹² See p. 23, n. 91.

included any trust whether expressed in writing or otherwise, in favour of a volunteer, and, if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, and as if the expression 'such property', wherever the same occurs, included the proceeds of sale thereof: "

[Here follows a paragraph dealing with policies of assurance.]

S. 2 (1) (c) does not merely impose E.D. in cases where Account Duty would have been claimed (with the additions mentioned therein), but applies s. 38 (2) of the 1881 Act (as amended) as "if those sections were herein enacted", thus applying to cases within its purview all the other provisions relating to E.D. generally, both in the F. A., 1894, and later Acts.⁹³

S. 2 (1) (c) accordingly applies to the following classes of property:—

(i) *Property falling under s. 38 (2) (a) of the 1881 Act*, as amended. This includes:—

(a) *Donationes mortis causa* or gifts of personal property made in contemplation of the donor's death (other than by suicide) with the condition that it shall be void if he recovers or the donee dies first. They are not entitled to the special exemption given to gifts *inter vivos* by s. 59 (2) of the F. (1909–10) A., 1910,⁹⁴ and s. 33 of the F. A., 1949.

(b) *Gifts inter vivos*. These are divisible, for duty purposes, into two classes:—

(1) *Gifts to the entire exclusion of the deceased*. By the combined operation of s. 2 (1) (c) of the F. A., 1894, s. 59 (1) of the F. (1909–10) A., 1910 and s. 47 of the F. A., 1946, all out-and-out gifts made by the deceased within five years (or in the case of gifts made for public or charitable purposes, within one year) of his death, to his entire exclusion, are liable to E.D. as property which is "deemed to be included" as

⁹³ See *per* Romer, L.J., in *Att.-Gen. v. Farrell*, [1981] 1 K. B. 81, at p. 102.

⁹⁴ See below, p. 76, and where the donor died before July 30, 1949, they were also liable to L.D.

property passing on his death. If the deceased dies on the first or fifth anniversary of the date of the gift, as the case may be, duty is not payable. "Public" is here opposed to private and includes, *e.g.*, contributions to the national or local funds of a political party. "Charitable" is construed in its strict legal sense, both as to the donee and the purpose of the gift.⁹⁵ Thus it does not apply to a gift to a needy person.

"The theory of the provisions here in question was . . . that . . . the property donated should be treated just as if no donation had been made and the property . . . had remained part of the deceased's estate."⁹⁶

It used to be said, on strong judicial authority,⁹⁷ that since the deletion by the F. A., 1894, of the word "voluntary" the word "gift" in s. 2 (1) (c) was entirely neutral and meant no more than "disposition", so that every transfer of property (apart from express exemption under other headings) was notionally within the charge of duty and if not a "gift" in the popular sense was only taken out by the exemption on the ground of purchase in s. 3.⁹⁸ This theory was exploded by the decision in *Re Earl Fitzwilliam's Agreement, Peacock v. C. I. R.*,^{98a} but was in effect given statutory authority by s. 46 of the F. A., 1950, as regards dispositions in favour of relatives^{98b} (only) by persons dying after April 18, 1950. But subject to this, some element of conscious bounty must exist to render gifts *inter vivos* liable to E.D., though "purporting", in the Act, does not mean that the donor must purport to make a gift, but that the *disposition* must be one which purports to be, *i.e.*, bears in its nature the marks of, a gift.⁹⁹

A gift is none the less a gift within the statutory period if

⁹⁵ As to this see *Income Tax, etc., Commrs. v. Pemsel*, [1891] A. C. 531.

⁹⁶ *Per* Lord Sands in *Strathcona (Lord) v. I. R. Commrs.*, 1929 S. L. T. 629, at p. 633, col. 1.

⁹⁷ *Viz., Att.-Gen. (Ir.) v. Smyth*, [1905] 2 Ir. R. 553; *Ld. Adv. v. Heywood-Lonsdale's Trustees*, 1906, 8 Fra. 724, which, however, merely decided that a settlement in consideration of the marriage of the settlor's child is a gift, though dicta therein went further in support of the theory mentioned above. For a suggestion against it, see *Att.-Gen. v. Ralli* (1936), 15 A. T. C. 523.

⁹⁸ See below, p. 63.

^{98a} [1950] 1 All E. R. 191.

^{98b} As defined in F. A., 1940, s. 44 (2).

⁹⁹ "Purporting" is not repeated in s. 11 (1) of the 1889 Act.

made within that period in pursuance of a previous binding promise outside the statutory period, unless the original transaction was such as would, if within that period, have given exemption.¹ *A fortiori* if the gift was made in pursuance of a moral obligation only.²

S. 2 (1) (c) applies only to complete gifts. There is no equity to perfect an imperfect gift and the attempt to do so will not be enforced as a trust.³ A cheque is a revocable mandate and there is no gift thereby until the cheque is cleared. If cleared within five years before the drawer's death the gift is liable to duty even if the cheque was drawn before that period started.⁴

Where the other conditions are fulfilled, E.D. is payable on the capital value of the subject of the gift, whether it is given absolutely or is settled on persons by way of succession. In the latter case the fund as a whole is taken by the beneficiaries as a whole.⁵

A gift more than five years before the donor's death is not taxable by reason only that the donor acted as trustee thereof.⁶

(2) *Gifts not to the entire exclusion of the deceased.* S. 2 (1) (c) also taxes gifts, *whenever made*, not to the entire exclusion of the deceased. A reference to the relative enactments incorporated in this sub-section⁷ will show that three conditions must all be fulfilled if any disposition made by the deceased at any time is to escape liability under this heading:—

(a) *bona fide* possession and enjoyment of the gift must have been immediately assumed by the donee and retained

¹ *Att.-Gen. v. Cobham (Viscount)* (1904), 90 L. T. 816; *Ld. Adv. v. Heywood-Lonsdale's Trustees*, 1906, 8 Fra. 724; apparently overruling *Matheson v. I. R. Commrs.*, 1898, 14 Sher. Ct. Rep. 156.

² *Att.-Gen. v. Chamberlain* (1904), 90 L. T. 581.

³ *Ellison v. Ellison* (1802), 6 Ves. 656; *Milroy v. Lord* (1862), 4 De G. F. & J. 264; *Richards v. Delbridge* (1874), L. R. 18 Eq. 11.

⁴ *Re Owen, deceased*, *Owen v. I. R. Commrs.*, [1949] 1 All E. R. 901; W. N. 201.

⁵ *Re Payne, Poplett v. Att.-Gen.*, [1939] Ch. 865; [1940] Ch. 576, C. A.; cf. *Wheeler v. Humphreys*, [1898] A. C. 506; per Lord Macnaghten, at p. 509:

"A gift is a gift whether it be given directly or through the medium of a trust".

⁶ F. A., 1894, s. 2 (3); F. (1909-10) A., 1910, s. 59 (1), and F. A., 1946, s. 47.

⁷ See above, pp. 23-24.

- (b) to the entire exclusion thenceforward of the donor from such possession and enjoyment,⁸ and
- (c) to the entire exclusion thenceforward of any benefit to the donor by contract or otherwise.

Condition (a) is satisfied if the property is transferred to a trustee for the donee, even if the donor declares himself trustee,⁹ and even if there is a trust to accumulate the income for the benefit of the donees.¹⁰ But there must be actual possession and enjoyment by or on behalf of the donee; the mere right to possession, etc., is not enough. Thus where a deed of gift included an interest in a fund which was being unlawfully accumulated through oversight it was held that the donees had not *bona fide* possession and enjoyment.¹¹ Similarly, if the donor of a house continues to live in it until his death, rent free or at less than the normal rent, the donee residing elsewhere, or if the donor transfers real or personal property to a donee but continues to receive the income, the condition is not satisfied. But mere continued joint occupation of a house or joint user of furniture by donor and donee will not apparently impair the donee's possession and enjoyment.

Condition (b) is satisfied notwithstanding that the donor continues to reside in a house the subject of the gift, if he does so merely as guest of the donee.¹² But if the deceased gave or settled a house more than five years before his death on condition that he might re-occupy it rent free or at a reduced rent, E.D. would be payable. The reservation of an equitable interest in property transferred by way of settlement does not invalidate the donor's exclusion from what he has actually given, *viz.*, the remaining equitable interests vested in favour of others.¹³ (In such a case if the gift were made within five years of the donor's death E.D. would be payable on the limited interests given.)

Condition (c) is not satisfied if any benefit, however small, is retained by the donor. This may be an annuity, a covenant

⁸ *Att.-Gen. v. Secombe*, [1911] 2 K. B. 688, *per* Hamilton, J., at p. 699.

⁹ F. A., 1894, s. 2 (3); F. (1909-10) A., 1910, s. 59 (1); F. A., 1946, s. 47.

¹⁰ *Adamson v. Att.-Gen.*, [1933] A. C. 257.

¹¹ *Ld. Adv. v. McTaggart Stewart*, 1906, 8 Fra. 579.

¹² *Ibid.* And apparently it is satisfied if under the terms of the gift the donor remains the tenant of the donee at a full rent.

¹³ *Re Cochrane*, [1906] 2 Ir. R. 200, C. A., approved in *Commr. for Stamp Duties v. Perpetual Trustee Co., Ltd.*, [1943] A. C. 425, P. C.

to pay the donor's debts¹⁴ or his household expenses,¹⁴ or to discharge some liability which he has incurred (*e.g.*, insurance premiums),¹⁵ or a power to charge a capital sum on the property.¹⁵ A settlement which provides that the settlor might receive a loan from the settled property without interest or under which he has an option to repurchase part of the property at less than its full value, or has rights in connection with shares giving him control of a company or other powers conferring pecuniary advantage, would appear to come within this heading and create liability to duty. The benefit need not start at the date of the gift or cease at the death. Nor need it be reserved out of the property, but may be purely collateral.¹⁶ It need not be provided by the donee.¹⁷ It is not necessary that the donor should be better off than he was before the gift; it is sufficient if he is better off than he would have been had he made an out-and-out gift. But it is necessary that the benefits should be provided with reference to or in connection with the making of the gift¹⁸; there is no claim where a man gives property and later and quite independently of the gift the donee grants him some benefit. Where some benefit is retained it would seem that duty is payable even if the benefit originally envisaged is never in fact received, but this is doubtful. A distinction might have to be drawn between cases where the donor merely forbears to claim his benefit and those where he can claim it only in certain events which in fact do not happen.

It has been said that the words "or otherwise" must be construed *ejusdem generis*, so that the benefit must be enforceable; and that the Act points at a contract or a "transaction enforceable at law or in equity which, though not in the form of a contract, may confer a benefit, such as a lien".¹⁹ Obviously, "or otherwise" must carry the meaning beyond "contract"

¹⁴ *Grey (Earl) v. Att.-Gen.*, [1900] A. C. 124.

¹⁵ *Re Clark* (1906), 40 Ir. L. T. 117.

¹⁶ *Att.-Gen. v. Worrall*, [1895] 1 Q. B. 99.

¹⁷ *Att.-Gen. v. Seacombe*, [1911] 2 K. B. 688, at p. 703.

¹⁸ *Att.-Gen. v. Kitchin*, [1941] 2 All E. R. 374, at p. 378 (though with respect it is submitted that the learned Judge went too far in stating that the benefit must be provided "at the time of the gift": cf. *Att.-Gen. v. Sandwich (Earl)*, [1922] 2 K. B. 500, at p. 516).

¹⁹ *Att.-Gen. v. Seacombe*, [1911] 2 K. B. 688, at p. 699, *per* Hamilton, J. Cf. *Att.-Gen. v. Sandwich (Earl)*, [1922] 2 K. B. 500, which, however, is incorrect in citing *Att.-Gen. v. Worrall*, [1895] 1 Q. B. 99, as authority for that proposition.

or it is superfluous and it is conceived that a gift made with an "honourable understanding" or "gentleman's agreement" to provide a benefit to the donor would be taxable. Note that the above considerations as to "contract or otherwise" apply only to condition (c) and not to (b).

By s. 59 (3) of the F. (1909-10) A., 1910, and s. 47 of the F. A., 1946, property the subject of a gift not to the entire exclusion of the donor, etc., within the above provisions is nevertheless exempt if by means of the subsequent release of the benefit reserved or otherwise it is enjoyed to the entire exclusion of the donor, in the sense indicated above, for five years preceding his death.

It should be noted that it is the property taken²⁰ which is taxable. No property is taken where a man merely acts so as to enhance the value of another's property. In the case of gifts to several persons who each take limited interests it is the property as a whole which is taxable, except as to any equitable interests which the donor may have reserved to himself. Where the gift is not to the donor's entire exclusion, etc., no allowance is made for any benefit reserved to him.²¹ Where the gift is by way of settlement E.D. is payable on the actual funds held in settlement at the donor's death.²² But where the gift is an absolute one it is the property taken which is taxable and this has to be valued as at the donor's death.²³ In the case of a gift of cash no difficulty arises. Similarly, if the property given has perished before the donor's death no duty is claimed.²⁴ But this will not operate to exempt a gift of stock merely because it has been changed to shares or because the company has been reconstructed. It is immaterial that the donee may have parted with the property, provided it is still in existence at the death²⁴; in the case of a gift of stock duty is payable on its value at the death, notwithstanding that the donee may have sold it and that his reinvestment is valueless at the death. Bonus shares declared

²⁰ But *per* Scott, L.J., in *Re Payne, Poplett v. Att.-Gen.*, [1940] Ch. 576, C. A., at p. 591, and *per* Wrottesley, J., in *Att.-Gen. v. Oldham*, [1940] 1 K. B. 599, at p. 608, this means the same as the property given.

²¹ *Att.-Gen. v. Johnson*, [1903] 1 K. B. 617.

²² *Re Payne, Poplett v. Att.-Gen.*, [1939] Ch. 865; [1940] Ch. 576, C. A.

²³ F. A., 1894, s. 7 (5).

²⁴ Cf. *Strathcona (Lord) v. I. R. Commrs.*, 1929 S. L. T. 629, *per* Lord Sands at p. 633, col. 2.

since the death in respect of shares given absolutely are not liable to E.D.²⁵; it is otherwise where such are issued in respect of shares given by way of settlement.²⁶ Where the donor contracts for the purchase of a house and has it conveyed direct to the donee the claim is on the house; in other cases the claim is on the purchase price as a gift of money.²⁷ An annuity extending beyond the donor's death, given by him within five years before his death, is taxable at its value at his death. In the case of a gift of a fully paid policy the claim is on the policy moneys, if it is on the deceased's life, but otherwise on the value of the policy at his death. If the policy has not matured and the donee pays the subsequent premiums, allowance for the latter is given. E.D. on a gift of an interest in expectancy may be deferred until the interest falls into possession.²⁸

S. 45 (2) of the F. A., 1940, gives statutory authority, in the case of deaths after June 26, 1940, to the view always held by the Revenue that the extinguishment of a debt or other right at the deceased's expense is a disposition in favour of the person for whose benefit it was extinguished and that the benefit thereof is "property" within the enactments relating to E.D. By s. 45 (3) such property is aggregable. These provisions apply to a disclaimer of a legacy or of a spouse's absolute benefits under intestacy, and apparently to a release of a general power of appointment or of revocation, but in practice are not applied to a release of *jus relictæ*, *jus relictî* or legitim under Scots law.

By s. 31 (2) of the F. A., 1939, money or money's worth paid or applied by the deceased within five years of his death in satisfaction or reduction of a debt incurred by him, the consideration for which either consisted of property derived from him or was given by a person whose resources included property derived from the deceased (unless the Commissioners are satisfied that such property was not derived with a view to enabling or facilitating the giving of the consideration) shall be taxable as a gift *inter vivos* by the deceased.

There are special exemptions from duty in the case of gifts *inter vivos*, which are considered below under "Exemptions".

²⁵ *Att.-Gen. v. Oldham*, [1940] 1 K. B. 599; 2 K. B. 485, C. A.

²⁶ *Re Payne, Poplett v. Att.-Gen.* (see p. 30, n. 22, above).

²⁷ In either case the donor had an interest in the subject-matter of the gift, which is aggregable with other property passing.

²⁸ F. A., 1894, s. 7 (6): see below, pp. 107-8.

(ii) *Property falling under s. 38 (2) (c) of the 1881 Act*, as amended and incorporated in s. 2 (1) (c), may be considered next, as such property, *viz.*, that settled with a reservation, is closely related to gifts *inter vivos*. In many cases liability arises under both headings.

The relevant enactments²⁹ render liable to E.D. all property passing under any settlement³⁰ or trust by the deceased whereby an interest for life or determinable by reference to death is reserved to the deceased or whereby he may have reserved the right to reclaim the absolute interest in such property.

“Passing under” in the sub-section is not used in the sense of s. 1 of the F. A., 1894, but indicates the instrument or title controlling the property, including one conferring a power of appointment, exercised and operative at the death.³¹

“Reservation” here is “an ordinary English word with its popular meaning and it does not mean more than that a life-interest is kept or provided for, or secured to the person making the settlement”.³² Hence the interest reserved must be with reference to the life of the settlor³³; in this case the criterion is different from that for s. 38 (2) (a). But the interest need not be certain or of the whole income of the property; a possible interest under a discretionary trust is enough.³⁴ Any interest, however small, will do.³⁵ An agreement to pay interest on the value of the property transferred is a reservation of an interest in the property.³⁶ Where the statutory conditions are satisfied, the claim under this heading extends to the whole of the property settled with a reservation. If several items of property are settled and an interest is reserved out of one only, only that one is taxable³⁷; similarly if the settlement divides the property into shares, reserving an interest in one share only. But where no

²⁹ See above, pp. 24-5.

³⁰ Defined in s. 22 (1) (i) of the F. A., 1894.

³¹ *Att.-Gen. v. Chapman*, [1891] 2 Q. B. 526; *Att.-Gen. v. Wendt* (1895), 65 L. J. Q. B. 54; *Re Cochrane's Settlement Trusts*, *Cochrane v. Turner*, [1945] Ch. 285.

³² *Att.-Gen. v. Gosling*, [1892] 1 Q. B. 545, at p. 548.

³³ *Re Cochrane*, [1905] 2 Ir. R. 626, at p. 634; *Re Cochrane's Settlement Trusts* (above, note 31), at [1945] Ch. 291. An interest for the settlor's life or some alternative period will do: F. A., 1940, s. 58 (6).

³⁴ *Att.-Gen. v. Farrell*, [1931] 1 K. B. 81, following *Att.-Gen. v. Heywood* (1887), 19 Q. B. D. 326, a decision on A.D.

³⁵ *Grey (Earl) v. Att.-Gen.*, [1898] 1 Q. B., at p. 325, *per* Channell, J.

³⁶ *Crossman v. R.* (1886), 18 Q. B. D. 256.

³⁷ *Att.-Gen. v. Grey (Earl)*, [1898] 1 Q. B. 318, at p. 325, *per* Channell, J.

such separation is possible the whole property is taxable, even if a part only is taxable under another head. Thus if a man settles property on his wife, reserving an annuity to himself, or on himself subject to an annuity to his wife, E.D. is payable on his death or the whole property notwithstanding that s. 2 (1) (b) would have given a smaller claim.³⁸

E.D. is payable under this heading on furniture settled by the deceased in which he retains a right of joint user with his wife (so that there would be no s. 1 claim), but not in the case of marriage settlements, by a liberal construction of s. 59 (2) of the F. (1909-10) A., 1910.³⁹

A sole power of revocation, where not giving liability under s. 2 (1) (a), as where only operative on some contingent event, renders the property liable under s. 38 (2) (c), as incorporated in s. 2 (1) (c),⁴⁰ but not a joint power or one exercisable only with the consent of another.

The benefit of s. 59 (3) of the F. (1919-10) A., 1910,⁴¹ is conceded to settlements with a reservation or a power of revocation.

(iii) *Property falling under s. 38 (2) (b) of the 1881 Act*, as amended and incorporated in s. 2 (1) (c) of the F. A., 1894, viz., *Joint Property*.

The relevant enactments⁴² charge with E.D. the whole of any property placed by the deceased, either alone or in concert or by arrangement with another, in the joint names of himself and another so that the beneficial interest therein *or in some part thereof* passes by survivorship on his death to such other.

Where the deceased made the joint investment within five years of his death the whole property is liable under s. 38 (2) (a) of the 1881 Act, as amended. But in other cases it must first be seen whether the property does in fact pass by survivorship. Where a man places property in the joint names of himself and his wife, child or other person to whom he stands *in loco parentis*

³⁸ *Re Cochrane's Settlement Trusts* (above, p. 32, note 31): cf. Lord Russell of Killowen in *De Trafford v. Att.-Gen.*, [1935] A. C. 280, at p. 290. and in *Skinner v. Att.-Gen.*, [1940] A. C. 350 at p. 358.

³⁹ See below, p. 76.

⁴⁰ *Grey (Earl) v. Att.-Gen.*, [1900] A. C. 124.

⁴¹ See above, p. 30.

⁴² See above, pp. 23, 24.

there is a presumption that he intends to benefit such person.⁴³ In all other cases there is a presumption of a resulting trust to the original owner.⁴⁴

Where advancement is thus presumed, in the case of realty or leaseholds there is a further presumption that it is immediate as to one-half of the property.⁴⁵ But in the case of pure personalty there is a presumption that all advancement is postponed to the donor's death,⁴⁶ for pure personalty, unlike realty and leaseholds, may be subject to parol trusts and its investment in joint names does not present the plain alternative of resulting trust or immediate advancement.

Consequently if a person places realty or leaseholds in the joint names of himself and of his wife or of someone to whom he stands *in loco parentis*, and the presumption of advancement is not rebutted, E.D. is payable on one-half of the property on his death first (if more than five years after the purchase), the strict claim on the whole to which s. 38 (2) (b) entitles the Revenue being waived as a concession in view of the legal rights. But if the property is pure personalty the whole of the property is liable. In this case, however, if the investment was made more than five years before the death, the full claim may be waived, by a similar administrative concession, in favour of a claim on one-half only, on definite proof that the donee was entitled as of right and actually enjoyed a severed share of the income during the joint lives, *e.g.*, if his share was paid to his

⁴³ On advancement generally see *Grey v. Grey* (1677), 2 Swanston 594; *Sidmouth v. Sidmouth* (1840), 2 Beav. 447; *Williams v. Williams* (1867), 32 Beav. 370; *Batstone v. Salter* (1874), L. R. 19 Eq. 250. Advancement operates in favour of an intended wife (*Moate v. Moate* (1948), 206 L. T. 115), but not from wife to husband (*Mercier v. Mercier*, [1903] 2 Ch. 98), mother to child (*Bennet v. Bennet* (1879), 10 Ch. D. 474) or grandmother to grandchild (*Re Vinogradoff*, [1935] W. N. 68).

⁴⁴ *Dyer v. Dyer* (1788), 2 Cox Eq. Cas. 92; *Finch v. Finch* (1808), 15 Ves. 43.

⁴⁵ *Dunbar v. Dunbar*, [1909] 2 Ch. 639. Since there can be no trust (other than a resulting, implied or constructive trust) without writing (Law of Property Act, 1925, s. 53) and so there must either be a resulting trust (which is here ousted by the advancement) or a true joint tenancy. As to Scottish cases see *Walker v. Galbraith* (1895), 33 S. L. R. 246.

⁴⁶ *Dummer v. Pitcher*, 1833, 2 My. & K. 262; *Re Eykyn's Trusts* (1877), 6 Ch. D. 115; *Re Condrin, Colohan v. Condrin*, [1914] 1 I. R. 89; *Re Hood*, [1923] 1 I. R. 109. This last case (and *Fowkes v. Pascoe*, note 47, p. 35, below) also shows that the donee is not entitled to income from the property during the joint lives. It is immaterial that the requirements of the Wills Act have not been complied with (*per* Romer, J., in *Young v. Sealey*, [1949] Ch. 287; 1 All E. R. 92).

separate account. But the mere application of the income for the joint benefit, *e.g.*, for household expenses in the case of spouses, or its investment in the joint names, is not enough. The same results, as regards liability to duty, as in cases where advancement follows these presumptions in cases of joint holding of real and personal property respectively, follow where, owing to the relationship of the parties, there is no presumption of advancement but express evidence thereof.⁴⁷ Where there is advancement, presumed or proved, then should the donee die first E.D. is payable on one-half of the property, if realty or leaseholds, under s. 2 (1) (a) of the F. A., 1894, and it is immaterial that the survivor has provided all the property, but no E.D. is payable if the property is pure personalty.⁴⁸ Where husband and wife purchase real or leasehold property as joint tenants more than five years before the death of the first to die, providing the price in unequal shares, E.D. is payable on the death of whichever dies first (a) where the husband is the larger contributor, on one-half; and (b) where the wife, on the proportion provided by the first to die.

Joint bank accounts are subject to special rules. Where a person deposits money in the joint names of himself and another so that either can draw, he can revoke as to the whole of the moneys not withdrawn and on his death first E.D. is payable on the whole remaining under s. 2 (1) (a) of the F. A., 1894, as he is competent to dispose thereof.⁴⁹ The rights of the other person are merely to draw during the joint lives and if he dies first there is no claim. Any withdrawal by such other within five years preceding the depositor's death would be liable to duty in connection with such death as a gift.

In deciding by whom property in the joint names of husband and wife has been provided, it should be remembered that moneys saved by a wife from her housekeeping or personal allowance are her husband's property unless there is evidence of a gift to her.⁵⁰

⁴⁷ *Fowkes v. Pascoe* (1875), L. R. 10 Ch. App. 343.

⁴⁸ F. A., 1894, s. 5 (3) (see below, p. 53).

⁴⁹ *M'Dowell v. M'Neilly*, [1917] 1 I. R. 117.

⁵⁰ *Barrack v. M'Cullough* (1856), 3 K. & J. 110; *Birkett v. Birkett* (1908), 98 L. T. 540; *Montgomery v. Blows*, [1916] 1 K. B. 899; *Blackwell v. Blackwell*, [1943] 2 All E. R. 579, C. A.; *Hoddinott v. Hoddinott*, [1949] 2 K. B. 406, C. A.; W. N. 163.

In the above cases of presumptive advancement or resulting trust the presumption may be rebutted by evidence to the contrary, but such evidence must be earlier than or contemporaneous with the joint investment; subsequent acts are admissible only against the doer.⁵¹ Rebuttal may be in whole or in part; thus there may be a resulting trust during the joint lives to the donor, with a right of survivorship on the death of the first to die. Where realty or leaseholds are conveyed to two persons as beneficial joint tenants, whether with or without a trust to sell, the form of conveyance is conclusive. Apart from the above-mentioned rules as to advancement, where joint property is provided equally and there is no other evidence a joint tenancy is presumed,⁵² except in the case of mortgages and partnership property, where a tenancy in common is presumed. Where the contributions are unequal the presumption is of a resulting trust according to the respective contributions and a tenancy in common. But all these presumptions may be rebutted by contrary evidence.

Where a husband purchases realty or leaseholds in the joint names of himself and his wife as joint tenants, obtaining part of the purchase money by mortgage from a building society and effecting a policy on his life for the amount of the mortgage, the premiums being added to the mortgage moneys, on his death first E.D. is payable on one-half of the property free of the mortgage and on one-half of the mortgage as at his death.⁵³

It should be noted that in all cases where a joint tenancy is established the deceased joint tenant is competent to dispose of his severable share, which is liable to E.D. under s. 2 (1) (a) of the Act.^{53a}

Joint policies and joint annuities are considered below, p. 65.

The fourth paragraph of s. 11 (1) of the 1889 Act deals with policies kept up for a donee; see below, p. 40.

(iv) *Annuities and other interests provided by the deceased.*—The fourth class of property which, by s. 2 (1) of the F. A., 1894, is deemed to be included in property passing on the death, is:—

⁵¹ *Sidmouth v. Sidmouth* (1840), 2 Beav. 447; *Warren v. Gurney*, [1944] 2 All E. R. 472, C. A.

⁵² *Robinson v. Preston* (1858), 4 K. & J. 505.

⁵³ The latter being a provision by him under s. 2 (1) (d) of the F. A., 1894, by freeing the wife's moiety of the property from the mortgage. (It is assumed that the purchase was made more than five years before his death.)

^{53a} See p. 52, below, for a note on Scottish law.

“(d) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death⁵⁴ of the deceased.”

S. 28 of the F. A., 1934, provides that the interest so provided “shall be ascertained . . . without regard to any interest in expectancy the beneficiary may have had therein before the death.”⁵⁵

S. 2 (1) (d) was considerably amended by the F. A., 1939, s. 30, considered below.⁵⁶

“The general purpose” of this sub-section, “is to prevent a man escaping E.D. by subtracting from his means, during life, moneys or money’s worth, which, when he dies, are to reappear in the form of a beneficial interest accruing or arising on his death.”⁵⁷ It should be noted that it is no answer to a claim under this head to represent the provision as a gift without reservation more than five years before the death.⁵⁸

S. 2 (1) (d) applies to annuities (*e.g.*, purchased to arise on death, or arising under a partnership deed), policies,⁵⁹ benefits under the rules of benefit societies, superannuation funds⁶⁰ and under settlements made by the deceased where no claim arises under another heading. The Crown or a foreign government is not a “person”, and accordingly duty is not claimed on pensions granted by the British Government to widows of Navy, Army or Air Force officers, or by Colonial governments under legislative authority to widows and children of their servants, or to widows and dependants of police officers, or on pensions and other benefits under the National Insurance Act, 1946. Pensions payable on deaths of civil servants (being strictly gratuitous) are not liable to duty, but those payable on the deaths of school teachers and

⁵⁴ This must be read in the light of s. 22 (1) (l) of the F. A., 1894.

⁵⁵ S. 28, F. A., 1934, was passed in consequence of the decision in *Adamson v. Att.-Gen.* (see above, p. 8, where an allowance was directed to be made against the value of the property of the value of the expectant beneficial interest of each beneficiary before the death).

⁵⁶ P. 39.

⁵⁷ *Per* Lord Loreburn, L.C., in *Lethbridge v. Att.-Gen.*, [1907] A. C. 19, at p. 23.

⁵⁸ Cf. *Adamson v. Att.-Gen.* (above, p. 7).

⁵⁹ See below, p. 40.

⁶⁰ The Estate Duty Office keeps particulars of such rules as come before it and it may often be helpful to inquire whether the particular fund has come under official notice.

local government officials (being payable as of right) are. Different considerations apply to moneys which form part of the free estate of the above-mentioned persons, as to which, see above p. 16.

There must be an interest, etc., actually arising on the death. If the interest was already indefeasibly in the beneficial ownership, the mere becoming entitled in possession by the death will not give a claim. Nor will a mere increase in value, by the death, of an existing interest. If there is an existing interest in possession, the interest arising on the death must, to be taxable, be sufficiently different to constitute a new interest. Where a limited interest in possession is enlarged by the death the claim is limited to the amount of the enlargement (*e.g.*, if A settles property on his wife for life, remainder to their issue, whom failing to the wife absolutely, on A's death without issue E.D. is payable on the enlargement of his widow's life-interest into an absolute interest). So a mere cesser by death of a joint power of revocation or appointment, or of a sole power with the consent of another, or the removal of an obstacle to beneficial enjoyment of property by death,⁶¹ is not enough. The interest must be legally enforceable.⁶²

The provision must have been made by the deceased himself or by him in concert or by arrangement with another, not by another in concert, etc., with him.⁶³ There may be such a provision, even where the deceased pays nothing, *e.g.*, under the rules of superannuation, etc., schemes, where the provision is considered to arise by virtue of the deceased's employment. The provision may be indirect; the deceased may make it through an agent, or he may provide funds and the machinery for producing the provision on his death by the acts of others.⁶⁴ It is not enough, however, for the purposes of s. 2 (1) (d), to put another in funds so that he can, if he wishes, make the provision,⁶⁵

⁶¹ In circumstances which formerly gave rise to S.D. (*e.g.*, a pension to a man's widow starting five years after his retirement is not liable to E.D. under this heading in connection with his death within that period).

⁶² *Re Miller's Agreement*, *Uniacke v. Att.-Gen.*, [1947] Ch. 615; 2 All E. R. 78.

⁶³ *Att.-Gen. v. Murray*, [1904] 1 K. B. 165.

⁶⁴ *Att.-Gen. v. Hawkins*, [1901] 1 K. B. 285; *I. R. Commrs. v. Scott's Trustees*, 1918 S. C. 720; 55 S. L. R. 654.

⁶⁵ Cf. *Lord Mackenzie in Scott's Trustees*, at 55 S. L. R., p. 658, col. 1; also *Lethbridge v. Att.-Gen.*, [1907] A. C. 19.

though in such cases there may be liability under s. 30 of the F. A., 1899.⁶⁶ "Concert" and "arrangement" in s. 2 (1) (d) do not necessarily imply a binding agreement. In the case of a policy, since no part of the moneys is attributable to any particular premium,⁶⁷ E.D. is claimed on the whole of the policy moneys if the deceased provided the premiums in concert, etc., with another, provided he was the prime mover.⁶⁸

"The annuity or other interest . . . is that which is deemed to pass" under s. 2 (1) (d), "though only to the limited extent indicated", and not the beneficial interests themselves.⁶⁹ Consequently the claim extends to the value of the interest arising: thus if the beneficiary takes absolutely the claim is on the capital, if for life, on the value of the life-interest arising.⁷⁰ Thus in *Att.-Gen. v. Lloyds Bank Ltd.*⁷¹ it was held that E.D. was payable on the life-interests arising, although the beneficiaries took absolute interests liable to defeasance.⁷² Where the interests arising are discretionary or liable to be destroyed by the exercise of some overriding power it may be impossible to quantify them, when no duty will be payable.

S. 2 (1) (d) was considerably amended to prevent certain types of evasion by the F. A., 1899, s. 30, which in effect applied its provisions to cases where the provision arising on the deceased's death is made, not by the deceased, but by another person (whether wholly or in part), if the latter had at any time owned, or had among his resources, property, however small, derived from the deceased. The liability to duty thus imposed is, however, diminished in proportion as the Commissioners are satisfied that the property derived from the deceased would have been insufficient to make the provision arising on his death; and in deciding whether there is any insufficiency, property, though derived from the deceased, which the Commissioners are satisfied was so derived without reference to or

⁶⁶ See below, last paragraph.

⁶⁷ *Re Harrison, ex parte Whinney*, [1900] 2 Q. B. 710, C. A.

⁶⁸ *Cf. Richardson v. I. R. Commrs.*, [1909] 2 Ir. R. 597, at p. 615.

⁶⁹ *Per Clauson, L.J.*, in *Westminster Bank, Ltd. v. Att.-Gen.*, [1939] Ch. 610, C. A., at p. 619.

⁷⁰ *Brookes v. Att.-Gen.*, [1939] Ch. 348, C.A.; *Westminster Bank, Ltd. v. Att.-Gen.*, [1939] Ch. 610, C. A., overruling *Att.-Gen. v. Dobree*, [1900] 1 Q. B. 442.

⁷¹ [1935] A. C. 382 (see above, p. 8).

⁷² Subject to the "Adamson allowance" now precluded by the F. A., 1934, s. 28.

not with a view to enabling or facilitating the provision, is disregarded. Property derived from the deceased is defined in s. 30 (8), as amended by s. 26 of the F. A., 1943.

The object of this section is to tax provisions made *indirectly* by the deceased and arising on his death. For example, a man, more than five years before his death, gives £10,000 to his children with which they take up shares in a private company then formed; with the cash the company buys an annuity from the deceased and applies it in paying premiums on a policy on his life. On his death the policy moneys are liable to E.D. under s. 30 of the F. A., 1939.

By s. 30 (2) the property liable under this section is "aggregable" with other property passing on the death.

Liability under these provisions can be combined with liability under s. 2 (1) (d), as where the deceased makes part of the provision directly and part indirectly within the meaning of s. 30 (1).

Policies.—Liability to E.D. of policies of assurance rests almost exclusively on s. 2 (1) (c), (d) of the F. A., 1894.⁷³

There was no reference to policies in s. 38 (2) of the 1881 Act, but its charges of duty were extended by the fourth paragraph of s. 11 (1) of the Customs and Inland Revenue Act, 1889 (both incorporated in s. 2 (1) (c) of the F. A., 1894), to money received under policies which are (a) on the life of the deceased, (b) effected by him, (c) kept up by him, and this (d) for the benefit of a donee.

The policy moneys charged with duty are the gross moneys. The Revenue has regarded a policy as effected by the person who pays the first premium, whether a party or not to the contract with the company, for the transaction is lifeless until such payment.⁷⁴ It is kept up by the payment of the premiums as a matter of actual fact and not necessarily in pursuance of any obligation.⁷⁵ Such payment may be indirect, as by an agent of

⁷³ Apart from claims under s. 2 (1) (a), see above, p. 17, and the uncommon case where a policy represents other funds originally subject to a settlement, e.g., as replacing trust moneys, or a leasehold redemption policy, when a claim under s. 1 may arise.

⁷⁴ Cf. *Att.-Gen. v. Public Trustee*, [1920] 3 K. B. 675, a case on the S.D. But cf. *Re Oakes, Public Trustee v. I. R.*, [1950] 2 All E. R. 851.

⁷⁵ *Att.-Gen. v. Meech* (1931) 75th Ir. R. Rep., 12, 15 Ann. Tax Cases, 619; *Att.-Gen. (Ir.) v. Robinson*, [1901] 2 Ir. R. 67, per Palles, C.B., at p. 90. *Barclays Bank, Ltd. v. Att.-Gen.*, [1944] A. C. 372, per Lord Macmillan at

the deceased, but it is not enough that the deceased should merely put a donee in funds to pay the premiums.⁷⁶ By s. 76 (1) of the F. A., 1948,⁷⁷ premiums paid out of property (or its income) comprised in a settlement made by the deceased are to be treated (for the purpose of the fourth paragraph of the 1889 Act) as paid by the deceased, unless such property was not provided by the deceased, directly or indirectly, and the Commissioners are satisfied that the payments were not made by reciprocal arrangements between the deceased and another. S. 76 (2) provided that a policy on the deceased's life effected by virtue or in consequence of a settlement by the deceased should be treated as effected by him within the meaning of the said fourth paragraph. S. 76 (4) defined "settlement" and the making of a settlement for this purpose. Thus if the deceased settles property on trust or with a power to apply its income in payment of premiums on a policy on his life effected by him or by the trustees under power in the settlement, E.D. is payable on his death on the policy moneys under s. 2 (1) (c). [In such a case E.D. is also payable on his death under s. 2 (1) (b) of the F. A., 1894, in respect of the proportion of the settled funds required by its income to produce the premiums.⁷⁸] Where the deceased effects a policy for his own benefit and then assigns it, paying no premiums after assignment, there is no claim under s. 2 (1) (c), for he has not kept up the policy for a donee.⁷⁹ The position is the same if the premiums were thereafter paid by borrowing from the insurance company or anyone else. "Donee" in this connection means "grantee" and is not necessarily the same person as the beneficiary who ultimately takes the policy moneys.

p. 377 and Lord Wright at p. 379. There is no "keeping up" of a single premium policy, *per* Lord Wright.

⁷⁶ *Lethbridge v. Att.-Gen.*, [1907] A. C. 19.

⁷⁷ Enacted in consequence of *Barclays Bank, Ltd. v. Att.-Gen.*, [1944] A. C. 372.

⁷⁸ *Barclays Bank, Ltd. v. Att.-Gen.*, [1943] 1 All E. R. 181. *Re Brassey's Deed Trusts, Coutts & Co., v. I. R. Commrs.*, [1951] 1 All E. R. 102. In *I. R. Commrs. v. Scott's Trustees*, 1918, 55 S. L. R. 654, the claims on the policies were held to extend to the capital under s. 2 (1) (d), where they would now be limited to the life interest and that on the "premium slice" was based on s. 2 (1) (d) instead of s. 2 (1) (b). Similar s. 2 (1) (b) claims will arise on the cesser of a trust to pay other regular sums out of income, *e.g.*, interest on a loan or a mortgage.

⁷⁹ *Ld. Adv. v. Fleming*, [1897] A. C. 145; *a fortiori* if the policy was fully paid.

Where the policy is partially kept up by the deceased, the fourth paragraph of s. 11 (1) of the 1889 Act charges duty on a part of the policy moneys in proportion to the premiums paid by him. In finding such proportion, premiums paid before a donee was constituted (*e.g.*, by assignment or settlement of the policy) are ignored.⁸⁰

Policy moneys may also be liable to E.D. under s. 2 (1) (d) as a provision by the deceased, by means of the payment of premiums, arising on his death.⁸¹ Such provision need not be in pursuance of any obligation⁸² and it may be indirect, for example through an agent, or by the setting aside of a fund on trust to pay the premiums⁸³ or by other means which he sets in motion, even if all the premiums are paid by loan from him or the insurance company or otherwise,⁸⁴ or indirectly by the deceased through another in circumstances to which s. 30 of the F. A., 1939, applies.⁸⁵ It is immaterial that the trustees or beneficiaries have power to sell or surrender in the deceased's lifetime.⁸⁶ But there is no claim under s. 2 (1) (d) where a fully-paid policy, or one which becomes fully-paid in the deceased's lifetime, has been effected for the benefit of, or assigned to, a beneficiary who is indefeasibly and absolutely entitled before such death, for then the whole beneficial interest passed before, and not on, the death (duty would be payable under s. 2 (1) (c) if the deceased paid premiums after the donee became entitled, or if the policy were effected or assigned within five years of the deceased's death). But any such policy comprised in a settlement will be liable under s. 2 (1) (d) as, although it passed to the trustees on assignment, the interests of the beneficiaries under the settlement do not accrue until the death.

⁸⁰ *Ld. Adv. v. Inzievar Estates*, [1938] A. C. 402.

⁸¹ *Att.-Gen. (Ir.) v. Robinson*, [1901] 2 Ir. R. 67; *Att.-Gen. v. Murray*, [1904] 1 K. B. 165, at p. 172.

⁸² Cf. *Richardson v. I. R. Commrs.*, [1909] 2 Ir. R. 597.

⁸³ *I. R. Commrs. v. Scott's Trustees*, 1918, 55 S. L. R. 654. *Barclays Bank v. Att.-Gen.*, [1944] A. C. 372, in deciding that the deceased does not keep up a policy within s. 2 (1) (c) by establishing a trust to pay premiums on it, did not deny a provision by him within s. 2 (1) (d). The Scottish case of *Ld. Adv. v. Hamilton's Trustees*, 1942 S. C. 426, seems contrary in certain respects to authorities like *Att.-Gen. v. Dobree*, *Att.-Gen. (Ir.) v. Robinson*, *I. R. Commrs. v. Scott's Trustees*, and *Westminster Bank, Ltd., v. Att.-Gen.*

⁸⁴ *Tennant v. Ld. Adv.*, [1939] A. C. 207.

⁸⁵ See above, p. 39.

⁸⁶ *I. R. Commrs. v. Scott's Trustees*, 1918 S. C. 720.

Unsettled policies will be similarly liable if the donee's interest does not become indefeasible until the death.

Claims under s. 2 (1) (d) on policy moneys, as on other property, are confined to the interests actually arising on the death.⁸⁷

4. *Disposition or Determination of Life-Interests, etc.*

The F. A., 1894, contained no provisions for taxing property in which a limited interest was surrendered shortly before a death, comparable to those for taxing *inter vivos* gifts.⁸⁸ This lack was remedied by s. 11 (1) of the F. A., 1900, which taxed such property so far as surrendered to the person next entitled within the statutory period or at any time not to the entire exclusion of the person making the surrender. S. 35 of the F. A., 1930, extended s. 11 (1) to cases where the settled property was conveyed to a company, and s. 39 of the F. A., 1930, rewrote s. 11 (1) as regards the surrender of annuities.

All these provisions were repealed and replaced, with more extended scope, by s. 43 of the F. A., 1940 (as regards deaths on and after June 27, 1940). This provides, in effect [s. 43 (1) (a)], that if property the subject of an interest limited to cease on the death of a person would have passed under s. 1 of the F. A., 1894, on such death had there been no disposition or determination of such interest (or, as regards deaths after April 18, 1950, no disposition of an interest expectant on that interest)⁸⁹ then the property shall nevertheless be deemed to pass on such death: similarly [s. 43 (1) (b)] if apart from the disposition or determination it would have been deemed to pass to a particular extent by s. 2 (1) (b) of the F. A., 1894, it shall nevertheless be deemed to pass to that extent on such death. But these provisions do not operate [s. 43 (2) (a)] where the disposition or determination occurred five⁹⁰ years or more (or

⁸⁷ See above, p. 39.

⁸⁸ Attempts to find such provisions were quashed by the decisions in *Att.-Gen. v. Beech*, [1899] A. C. 53 and *Att.-Gen. v. De Preville*, [1900] 1 Q. B. 223, C. A.

⁸⁹ F. A., 1950, s. 43. Thus all transactions which prevent the property from passing or being deemed to pass must be taken into account, notwithstanding that any one of them taken by itself did not have that effect.

⁹⁰ F. A., 1946, s. 47 (three years as to deaths before April 10, 1946).

one year, if effected for public or charitable purposes) before the death and was to the entire exclusion of the person who had the interest, or [s. 43 (2) (b)] in the case of a partial determination if such exclusion was not complete by reason only of the retention of some part of the property or some benefit under the provisions of the instrument conferring the interest.

Thus no determination or disposition of the interest within the statutory period preceding the death, and no such even before that period which does not entirely exclude the deceased (within the meaning of the section), relieves from the duty which would have been payable had such determination or disposition not occurred.

An interest limited to cease on death includes (s. 58 (6) of the Act) one limited to cease on death or on some alternative event (or the expiration of a period) before the death, *e.g.*, an interest for the life of A or until his marriage.

The determination or disposition of the interest can be effected or suffered in any manner, except by the expiration of a fixed period provided in the instrument. The happening of an alternative event envisaged in s. 58 (6) may constitute a determination.⁹¹ It is immaterial whether the determination was effected for value or not, but it is necessary that the interest must have become an interest in possession before the determination.⁹² The determination must be legally effective, though this may be inferred: but a mere waiver is not enough, nor is a legal surrender of the interest for less than its whole duration. The acquisition, in whatever manner, by the life-tenant of the reversion expectant on his own death is regarded as enlarging, rather than determining, his interest; accordingly s. 43 does not apply, whether such acquisition occurs within the statutory period or not. Similarly the E.D. claim is not preserved by s. 43 where, to provide for the gift of an annuity, one is purchased (no matter when) under an express direction or power in the instrument, or even without these if the purchase

⁹¹ But not by virtue of s. 58 (6), which only defines an interest limited to cease on death for the purpose of these provisions.

⁹² Thus s. 43 does not apply where a life-interest is validly disclaimed by the life-tenant (or by his personal representative after his death) before assent or acceptance, or to "after-acquired property" not in possession at the date of the determination, or where a reversionary life-interest is determined within five years of the potential life-tenant's death.

is within the period of administration, in the case of a will. But a life-tenant who surrenders his interest in return for an annuity is not excluded from benefit within s. 43 (2) (except, possibly, if, where an annuity is purchased, it can be shown that he had the option of taking the purchase money instead).

The conditions as to non-exclusion of the deceased or of any benefit to him by contract or otherwise are the same as in the case of gifts *inter vivos* (see above, p. 28); except that, in case of deaths after April 18, 1950, the F. A., 1950, s. 43 (2), makes the deceased the recipient of a benefit if he obtained one through any operations associated (within the meaning of s. 59 of the F. A., 1940) with the disposition or determination of his interest.

S. 43 (2) (b) refers to cases where a life-interest in property is reducible under the instrument creating it to one in part of the property or to an annuity, or an annuity is reducible to a smaller annuity, on a contingency, such as remarriage. In such cases no claim arises in respect of the reduction if the contingency occurs five years or more before the death. A similar freedom from duty is given where, before the start of the statutory period, the life-tenant surrenders without reservation his interest in a definite part of the settled property or surrenders his interest except to the extent of an annuity payable out of the income of the settled property and not otherwise secured, provided that the property originally settled does not pass as a whole.⁹³ In such cases the claim is limited to the retained portion of the fund or to the proportion thereof required to produce the annuity.

S. 43 (3) provides in effect that, where settled property is mortgaged by life-tenant and remainderman ⁹⁴ within five years of the former's death or at any time where the life-tenant was indemnified against loss of interest, duty shall be paid on the property without deduction for the mortgage, unless and so far as the mortgage moneys were so applied as to maintain or increase the value of the property.

⁹³ See below, pp. 56, 78, and *Cowley (Earl) v. I. R. Commrs.*, [1899] A. C. 198.

⁹⁴ So that the life-interest is determined to the extent of the mortgage money, which is taken out of settlement and only the equity passes (*Cowley (Earl) v. I. R. Commrs.*, [1899] A. C. 198, unless the life-tenant was indemnified against loss of interest, as in *Att.-Gen. v. Montagu (Lord)*, [1904] A. C. 316).

S. 43 (4) adapts s. 59 (3) of the F. (1909-10) A., 1910, so as to ensure that no duty shall be payable under s. 43 if the benefit reserved to the deceased is later, but five years or more before his death, released by him to his entire exclusion thereafter.

S. 43 (7) applies this section (*i.e.*, s. 43) in Scotland to the conveyance or discharge of any life-rent and to the propulsiion of the fee under any tailzied destination, and for this purpose treats the interest of an institute or heir of entail as an interest limited to cease on death. S. 45 of the F. A., 1950, ensures that on the death of a tenant in tail of an estate inalienably settled who has disposed of his personal interest more than five years before and to his entire exclusion no E.D. shall be payable.

Where a company⁹⁵ is concerned in the disposition or determination of the limited interest, or in any associated operations,⁹⁶ s. 56 (2) of the F. A., 1940, provides that the person who had the limited interest shall be treated as entirely excluded, within s. 43 (2), only if he would have been so treated had the company been merely a trustee for its members and creditors (other than purely business creditors⁹⁷). Thus any pecuniary advantage which the deceased actually received or was entitled to receive as shareholder, director or otherwise, under the articles of association of the company (as by the exercise of some power or of voting rights, etc.) will be a benefit under s. 43 (2), with or without the assistance of s. 56 (2).⁹⁸ Normally, however, his mere retention of shares to which no special rights are attached will not involve his non-exclusion from the remaining shares : in effect he has merely taken part of the settled property and retained no interest in the remainder. Nor will normal remuneration as an officer of the company constitute a benefit by itself. It would be otherwise if such remuneration, or the dividends or interest on the shares or debentures allotted to him, were abnormally high.

⁹⁵ Defined in s. 58 (1) of the Act, as amended by s. 47 of the F. A., 1946.

⁹⁶ Defined in s. 59.

⁹⁷ For this purpose, liability of the company for remuneration as holder of an office under it which is unreasonable in the opinion of the Commissioners is not a purely business debt (F. A., 1940, s. 51 (4)).

⁹⁸ In *Att.-Gen. v. St. Aubyn*, [1950] 1 All E. R. 79, C. A., it was held that s. 56 (2) could be used not only to see whether the deceased was excluded or not after the determination or disposition, but also to see who was really interested within the meaning of s. 43 (2) (a) before such event.

5. *Benefits from Companies*

The increasing use of private companies and the framework of company law for the legal avoidance of death duties led to special legislation to circumvent this leakage. As regards deaths on or after June 27, 1940, this is mainly to be found in certain sections of the F. A., 1940, as amended subsequently, replacing the earlier provisions to this end of ss. 34, 36 and 38 of the F. A., 1930.⁹⁹ The general scheme of attempted evasion was to secure to a person the enjoyment of a company's operations, while at the same time avoiding a "passing" on his death of any part of the assets of the company from which the benefits were derived. The purpose of the legislation was to impose E.D. on the appropriate part of the company's assets.

The provisions of the F. A., 1940, as to benefits from companies were modified by the F. A., 1944, as regards deaths on or after July 13, 1944, and by the F. A., 1946, as regards those on or after April 10, 1946. The following summary is based on the law at present in operation. Care should be taken in dealing with any deaths on intermediate dates to apply only the operative statutes. Part II of the Eleventh Schedule to the F. A., 1946, made certain transitional provisions, the effect of which is exhausted as regards deaths occurring after April 9, 1948.

It will be seen from s. 46 (1) of the F. A., 1940, as amended by s. 47 of the F. A., 1946, and the Eleventh Schedule to that Act, that only three conditions are necessary to establish a *prima facie* claim for E.D. under the first-mentioned section :—

(1) the company must be one to which the section applies, *i.e.*, a company which at any relevant time was under the control of not more than five persons¹;

(2) the deceased must at some time have made a transfer of property to the company;

(3) benefits must have accrued to the deceased in the five calendar years ending with his death.

If these three conditions are fulfilled, the presumptive claim

⁹⁹ Repealed by s. 46 (5) of the F. A., 1940.

¹ Full definition, including that of "relevant time", will be found in s. 58 (1) of the F. A., 1940, as amended by s. 47 of the F. A., 1946, and the Eleventh Schedule to the latter Act. Certain groups of related persons are treated as a single person.

for E.D. extends to a fraction of the company's net assets at the date of death represented by—

$$\frac{\text{aggregate benefit to the deceased for five accounting years}}{\text{aggregate net income of the company for five accounting years}} \times \text{net assets } (2)$$

The apparent simplicity of these principles is overlaid with numerous complexities, which the following explanation may help to clarify.

Transfer of property by the deceased to the company.

For this purpose "property" includes cash. Interests limited to cease on the death are, however, excluded,³ as is property transferred in a fiduciary capacity.⁴

What constitutes a transfer of property for this purpose is very widely defined. It includes a "disposition" by the deceased as a result of which property becomes included in the company's resources—"disposition" being itself defined in ss. 59 and 45. In order that indirect as well as direct transfers may come within the scope of the Act it is provided that the conditions shall be satisfied if the "disposition" is one of a series of "associated operations", also defined in s. 59. Further, it is not necessary that the transfer should be effected by the deceased alone.⁵

The amount of the property transferred does not determine the extent of the claim, though it may in certain cases be a factor in fixing a "ceiling" (see below, pp. 50–51). Nor need the transfer necessarily be connected with the granting of the benefit. The circumstances of the transfer are not relevant in this connection: it may have been a gift, a loan or a sale for full consideration.

Benefits accruing to the deceased from the company (the numerator of the fraction).

These are defined by s. 47 of the F. A., 1940 (the three-year period being amended to five years by s. 47 of the F. A., 1946). It will be observed that benefits include not only sums paid or credited to the deceased, but also enjoyment of property in specie, certain payments that he could have received but did not,

² F. A., 1946. Eleventh Schedule, I (4), replacing s. 46 (2), F. A., 1940, as amended by s. 35 of the F. A., 1944.

³ See above, p. 46, as to such interests.

⁴ Other than under a disposition made by the deceased himself (F. A., 1940, s. 58 (5)).

⁵ F. A., 1940, ss. 58 (2) and (4).

or the application of which he could have controlled, and sums that are applied or enure for his benefit, or that operate to increase the value to him of property in which he is beneficially interested (such as profits earned but not distributed by a company in which he had shares). The provisions are too comprehensive and detailed to admit of accurate summarisation. Any cases of doubt involve a study of s. 47 itself, of s. 58 (3) and of paragraphs 1 and 2 of the Seventh Schedule of the F. A., 1940. The Seventh Schedule also deals with the important matter of the time when the benefits are to be treated as accruing.

“Benefits” include “periodical payments”,^a which are not confined to income payments.

S. 48 of the F. A., 1940, preserves notionally benefits which the deceased would or could have received or acquired if he had not surrendered his title to them, unless such surrender were *bona fide* made outside the statutory period (five years before his death, where that occurred on or after April 10, 1946) to his entire exclusion.

While dealing with benefits, two provisions in the Act designed to prevent injustice may be mentioned. It would clearly be unfair that the receipt by the deceased of reasonable remuneration for services which he rendered as the holder of an office under the company should involve payment of E.D. on his death on a “slice” of its assets corresponding to this income. Such remuneration is therefore expressly excluded as a “benefit” for this purpose by s. 51 (4) of the F. A., 1940. The second provision springs from the fact that many of the benefits as defined by the Act flow to the deceased by virtue of his interest in shares or debentures of the company, which shares or debentures may be liable to E.D. on his death. It would be inequitable to levy E.D. both on the value of such holdings and on the proportion of the company’s assets corresponding to the benefits that they produce. Consequently s. 38 of the F. A., 1944 (in substitution for s. 51 (2) of the F. A., 1940), permits reduction of the claim under s. 46 of the F. A., 1940, by the amount of the value of the shares or debentures. Generally, this deduction is permissible even where the

^a S. 47 (1) (a) and s. 47 (2) of the F. A., 1940.

shares or debentures are wholly or partially exempt from E.D.⁷, otherwise the benefit of the exemption would be lost. Where the value of the shares or debentures equals or exceeds the "slice" of the company's assets there is no claim under s. 46 on such "slice", though benefits accruing other than through shares or debentures may give rise to a claim.

S. 38 of the F. A., 1944, removed an anomaly under the 1940 Act through which a company might have to pay duty formerly borne by executors or trustees. For the purpose of that section benefits are treated as "share benefits" (*i.e.*, benefits accruing by virtue of the deceased's interest in shares or debentures) if they would have been available as such had they not been otherwise dealt with. For instance, if there is a claim under s. 46 on a "slice" of the company's assets corresponding to excessive remuneration of the deceased, such excessive remuneration would have been available for dividends on the shares if not so applied. Consequently if the deceased held, say, one-fourth of the shares, the "excessive remuneration slice" will be reduced by one-fourth.⁸

S. 51 (1) of the F. A., 1940, divides benefits into two main classes—those received by virtue of the property transferred to the company (which may be conveniently referred to as "transfer benefits") and other benefits ("non-transfer benefits"), and the proportion of the company's assets attributable to each class of benefit can be separately calculated. The former class frequently, but not necessarily, coincides with the "share and debenture benefits" dealt with in s. 38 of the F. A., 1944. As regards the proportion of assets corresponding to "transfer benefits" s. 51 (1) provides a "ceiling" in that the taxable value is not to exceed the value of the property transferred

⁷ S. 38 (2A), (2B) and (2C) of the F. A., 1944. S. 48 of the F. A., 1940 (see above), would have had the effect, *inter alia*, of raising a charge to E.D. by reference to benefits in respect of shares even though they had been sold for full consideration within the statutory period; but the view was formerly taken, on the basis of *Att.-Gen. (Ir.) v. Smyth*, [1905] 2 Ir. R. 553, that such shares were the subject of a specific exemption under s. 3 of the F. A., 1894, and consequently entitled to the relief conferred by s. 38 (2A), (2B) and (2C) of the F. A., 1944. The decision in *Re Earl Fitzwilliam's Agreements*, *Peacock v. C. I. R.*, [1950] 1 All E. R. 191, having modified this interpretation of the *Smyth* decision, the position as regards shares has been rectified by s. 47 of the F. A., 1950, which also includes special provisions covering sales of shares for partial consideration.

⁸ F. A., 1940, Seventh Schedule, para. 5.

plus the excess of interest at the "average rate" from the date of transfer to the date of death over the corresponding benefits.⁹ There is no "ceiling" as regards the proportion of assets relating to "non-transfer benefits".

Benefits include Income Tax paid or borne by the deceased in respect of such benefits.¹⁰

If there has been any variation of the company's assets by way of capital distribution or capital additions during the period under consideration, the benefits may need adjustment, as to which see below, p. 52.

Net Income of the Company (the denominator of the fraction)

Income is determined on the same basis as for Income Tax,¹¹ but the deductions in arriving at net income may not correspond with those allowed in a Schedule D assessment. For instance, excessive remuneration of officers of the company is not deductible.¹² Where the company owns properties assessable under Schedule A the annual value of such properties will have to be added to the company's other income.

The denominator of the fraction consists of the aggregate income for the last five accounting years of the company.¹³ "Accounting year" is defined in s. 59 and Seventh Schedule, paragraph 6, of the F. A., 1940. Losses for any year are deductible in ascertaining aggregate income¹⁴; and there are special provisions as to companies of recent formation.¹⁵

The income for the purpose of the computation may need adjustment if there have been any variations of the company's assets by way of capital distributions or capital additions during the relevant period, as to which see below, p. 52.

Assets of the Company (the multiplicand)

These are ascertained in accordance with s. 50 of the F. A., 1940, on the basis of an assumed sale. It is the gross assets

⁹ "Average rate" is defined in s. 36 of the F. A., 1944, amending s. 59, F. A., 1940.

¹⁰ F. A., 1940, Seventh Schedule, para. 1 (6).

¹¹ F. A., 1940, s. 49, as amended by F. A., 1944, s. 39.

¹² F. A., 1940, s. 51 (4), in conjunction with s. 49 (a).

¹³ F. A., 1940, s. 46 (2), amended first by F. A., 1944, s. 35, and later by F. A., 1946, s. 47 and Eleventh Schedule.

¹⁴ Computed in accordance with s. 37 of the F. A., 1944.

(including goodwill)¹⁵ that are assumed to be sold, but deduction is allowed of ordinary liabilities, excluding shares and debentures, but including contingent liabilities reasonably estimated. No deduction is permissible in respect of Income Tax for a fiscal period which had not started at the date of death, although such tax may in fact be computed by reference to profits earned before the death and included in the assets.¹⁶

It will be apparent that anomalies might occur if the company's assets were depleted by capital distribution, or increased by capital additions, between the beginning of the first accounting year and the date of death, thus upsetting the proper relationship between the deceased's benefits and the company's assets. This is adjusted by s. 46 (3) of the F. A., 1940¹⁷, which provides for the inclusion of distributed assets with the others, and the Seventh Schedule, paragraphs 3 and 4, which provide for adjustments of income and benefits. Paragraph 3 (4) also provides for an adjustment of the final claim for duty if the deceased had received beneficially any part of the distributed assets.

By s. 52 of the F. A., 1940, the deceased is regarded as having an interest in the property deemed to pass on his death under s. 46, so that such property is aggregable with the other aggregable property passing.

The company is primarily accountable for the duty where there is a claim under s. 46 of the F. A., 1940, and ancillary sections¹⁸, and there is an obligation on the company and its officers to give information to the Revenue in cases of a potential claim within one month of the death of the deceased.¹⁹

¹⁵ F. A., 1940, s. 59.

¹⁶ *Re Duffy, Lakeman v. Att.-Gen.*, [1948] 2 All E. R. 756, C. A.

¹⁷ Which should be read in conjunction with s. 50 (3) and (4) of the Act.

¹⁸ F.A., 1940, s. 54.

¹⁹ F. A., 1940, s. 53.

Joint Holdings under Scottish Law (p. 36, n. 53a): In Scotland there is no *jure accrescendi*; the rights of joint holders are in general similar to those of English tenants in common. There is a strong presumption against donation (*Sharp v. Paton*, 1883, 10 R. 1000, and *British Linen Co. v. Martin*, 11 D. 1004) and the investment of moveable property in names of its original owner and of another does not by itself confer on that other a right to a share of the property as an immediate gift—*Dennis v. Aitchison*, 1923 S. L. T. 568. Express destinations, of course, receive effect, i.e., a destination to A and B and survivor would carry the whole investment to the survivor at the death of the original owner failing evidence that the latter had evacuated the destination—*Cunningham's Trustees v. Cunningham*, 1924 S. C. 581. So far as heritage is concerned a destination to the deceased and his wife and the survivor gives the wife an indefeasible right to a one half share of the property at the date of the conveyance and she takes the other half share on the death of the deceased if she survives—*Walker v. Galbraith*, 1895, 23 R. 347. It should be kept in view that there may be an element of contract between joint holders which would give the survivor(s) an indefeasible right to the whole, i.e., where the price had been jointly contributed and the title taken with survivorship—*Perrett's Trustees v. Perrett*, 1909 S. C. 522.

CHAPTER II

EXEMPTIONS, RELIEFS AND ALLOWANCES

The following exemptions, statutory and otherwise, from E.D. are given:—

(1) *Estates not exceeding £2,000 in value* are exempt as no rate of E.D. is prescribed. The “estate” means all the property within the charge of E.D. no matter what the title. In certain cases part of the property may be an “estate by itself”¹ and is excluded from the computation. If either it, or the remainder of the property, or both, should not exceed £2,000, no E.D. is payable in respect of such part, or the whole, as the case may be.

(2) *Property in which the deceased or any other person had an interest only as a holder of an office or recipient of a charity or as a corporation sole* is exempt under s. 2 (1) (b) of the F. A., 1894. This includes interests, e.g., annuities, payable to a person for acting as trustee,² and apparently as director of a company. Corporation sole includes the Crown, various ecclesiastical offices, etc.

(3) *Property held by the deceased as trustee for another* under a disposition not made by the deceased, or under one made by him more than five years³ before his death where possession and enjoyment were *bona fide* assumed by the beneficiary immediately and retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise,⁴ is exempt if passing on the deceased's death by s. 2 (3) of the F. A., 1894.

(4) *Failure of an interest in settled property*.—S. 5 (3) of the F. A., 1894, as extended by s. 48 of the F. A., 1938, provided that settled property⁵ should not be deemed to pass by reason only of the failure or determination of the interest of

¹ See below, p. 94.

² *Att.-Gen. v. Eyres*, [1909] 1 K. B. 723.

³ Three years inserted instead of twelve months by s. 59 (1) of the F. (1909-10) A., 1910, and five years instead of three years by Eleventh Schedule, F. A., 1946.

⁴ The same criteria apply here as to cases under s. 2 (1) (c); see above, p. 27.

⁵ See p. 57 below.

a person, upon his death, before it became an interest in possession. This exemption applies not only to cases where, for example, property is settled on A for life, remainder to B for life, remainder to C, and B dies in A's life (where there is clearly no passing on B's death and no E.D. would have been claimed had s. 5 (8) not been enacted),⁶ but to the following cases:—

(a) A reversion settled by the deceased on himself for life, where he dies (whether within five years of the settlement or not) before it falls into possession⁷; (b) property subject to a general power of appointment vested in, but unexercised by, the deceased and to a prior life-interest outstanding at his death; (c) entailed property of a tenant in tail in remainder who dies without disentailing; (d) reversionary property held in joint tenancy, on the death of a joint tenant without severing; (e) a joint annuity where one annuitant dies before receipt of any instalment and his estate is not entitled to any apportionment; (f) a settled legacy where the legatee for life dies within the executor's year and before the legacy has been appropriated⁸ (even if he had a general power of appointment thereover, provided he did not exercise it); (g) property the limited interest in which of another person is enlarged by the deceased's death, where the deceased might himself have been entitled as survivor (*e.g.*, a settlement on the deceased's wife for life, remainder to the survivor of them: here the s. 2 (1) (d) claim on the enlargement of her interest is defeated by s. 5 (8), since the deceased's contingent interest as survivor has failed).⁹

S. 5 (8) does not, however, give exemption if there is any other heading of liability under s. 1 or s. 2 (1) of the Act unrelated to that which has failed by reason of the deceased's death before his interest came into possession. Thus property (whether in possession or reversion) settled within five years of the settlor's

⁶ Had the ultimate remainder been to A instead of C, s. 14 of the F. A. (1896) provided that no E.D. should be payable by B's death, even though it enlarged A's interest to an absolute one (and see *Att.-Gen. v. Wood*, [1897] 2 Q. B. 102) but only if A is the settlor.

⁷ Here there is clearly no s. 1 claim, there is no *immediate* gift within s. 38 (2) (a) of the 1881 Act and no real reservation within s. 38 (2) (c).

⁸ *Re Harrison, Johnstone v. Blackburn, etc., Infirmary* [1918] 2 Ch. 374. But this does not apply to annuities, specific gifts or to residue, where the beneficiary is entitled to income from the testator's death and it is immaterial that he may not have received it (*Att.-Gen. v. Watson* [1917] 2 K. B. 427). As to the cesser of a limited interest in unadministered residue, see below, p. 111.

⁹ And see above, p. 14, as to estates *pur autre vie* in certain circumstances.

death on another for life is liable to E.D. as a gift, property similarly settled at any time with a power of revocation reserved to the settlor is liable under s. 2 (1) (a) of the F. A., 1894, and a policy on the settlor's life so settled is liable under s. 2 (1) (c) or (d), notwithstanding that in each case the settlor may have reserved himself a reversionary life-interest which has failed. It is irrelevant that one interest of the deceased has failed by reason of his death, if he had another interest under the same settlement which came into possession.¹⁰ On the other hand, receipt of income by a minor as maintenance *eo nomine* (pending the emergence of an interest in possession on majority or later) has been held not to constitute an interest in possession,¹¹ and no claim arises on his death before majority. But the minority of the deceased is no bar to a claim if he is *entitled* to income of definite property or to an annuity.¹² Where trustees have power to make maintenance payments to persons not infants, liability to duty will normally depend on the rules given above (pp. 9-18) as to claims under s. 1 and discretionary trusts.¹³

Where settled property passes on the death of a life-tenant subject to a *continuing* annuity, whether in favour of the person succeeding to the property on that death or not, E.D. is payable on the property less the capital required to produce the annuity. But if the annuity ceases on the death of the life-tenant the property as a whole passes on that event, even if the annuitant is the successor, or then takes a larger annuity. If the annuitant is the successor, or then takes a larger annuity, allowance for the capital to produce the annuity is given, but even then only where s. 5 (3) applies, *i.e.*, where the annuity is payable during the joint lives of the life-tenant and annuitant and is charged on the property or was payable out of the income thereof in priority to the life-tenant's interest,¹⁴ so that the life-tenant

¹⁰ *Re Jones' Will Trusts*, *Soames v. Att.-Gen.* [1947] Ch. 48, where E.D. was held to be payable on the death of a person entitled to income under s. 31 (1) (ii) of the Trustee Act, 1925, notwithstanding the failure by his death under 25 of a contingent interest.

¹¹ *Att.-Gen. (I) v. Power* [1906] 2 I. R. 272, distinguished in *Re Jones' Will Trusts* (above).

¹² *Att.-Gen. v. Coole* [1921] 3 K. B. 607.

¹³ *Re Turner's Will Trusts* [1937] Ch. 15, shows that s. 5 (3) will exempt in such a case if the deceased had a future interest which failed and had actually received nothing under the discretionary power.

¹⁴ *Att.-Gen. v. Glossop*, [1907] 1 K. B. 163, C. A., the soundness of which has been criticised as contrary to *Re Palmer. Palmer v. Palmer*, [1916] 2 Ch. 391, C. A., and *De Trafford v. Att.-Gen.*, [1935] A. C. 280.

might have survived the annuitant and become entitled to the income paid to the latter, which interest has in events failed. Where the annuity is for the life-tenant's life, the latter has no interest therein which can fail, and the property as a whole passes free from the annuity.¹⁵ Where it is merely a charge on the life-tenant's interest the settled property is unaffected. Where it is merely carved out after the life-tenant had enjoyed the whole income s. 5 (3) is in terms excluded.¹⁶

When a reversion is settled on a life-tenant who dies before it has fallen into possession or is sold and the rule in *Re Earl of Chesterfield's Trusts* (1883), 24 Ch. D. 643, applies, s. 5 (3) is ousted, as the life-tenant's interest has not failed. E.D. is accordingly payable in connection with the life-tenant's death in respect of the proportion of the reversion attributable to capital as passing under the disposition creating such life-interest, and also in the life-tenant's estate in respect of the proportion attributable to income. Both interests are, however, interests in expectancy and payment of duty may be deferred until the reversion falls into possession.¹⁷ If the person on whose death the reversion falls into possession and the life-tenant under the second title are one and the same person any E.D. so payable under the primary title on the property as then passing thereunder is considered to cover the claim under the second title in respect of the proportion of the reversion attributable to capital.¹⁸

(5) *Settled property which paid E.D., Probate Duty*¹⁹ *or Account Duty on the death of the deceased's spouse.*—The F. A., 1894, s. 5 (2), enacted that if E.D. had already been paid in respect of settled property since the date of the settlement then no further E.D. should be payable thereon until the death

¹⁵ *Cowley (Earl) v. I. R. Commrs.*, [1899] A. C. 198, especially *per* Lord Macnaghten at p. 216.

¹⁶ *De Trafford v. Att.-Gen.* [1935] A. C. 280. If the annuity is increased (e.g., by the exercise of a joint power in a resettlement) s. 5 (3) cannot exempt the "slice" to produce the increase.

¹⁷ See F. A., 1894, s. 7 (6): below, pp. 107-8.

¹⁸ See F. A., 1894, s. 7 (10): below, p. 80. Similarly, any exemption under s. 5 (2) thereof (see paragraph (5) immediately below) under the primary title is considered to give exemption to the proportion attributable to capital passing under the subsidiary title.

¹⁹ Or Inventory Duty in Scotland.

of a person who was at his death, or had been during the continuance of the settlement, competent to dispose thereof.²⁰ S. 21 (1) of the Act gave similar exemption to property settled by the will or disposition of a person dying before the Act in which P.D.¹⁹ or A.D. was paid or payable. But s. 14 of the F. A., 1914, abolished these exemptions except where the prior payment of E.D., P.D. or A.D. was made on the death of a party to a marriage with the person on whose death exemption would otherwise have been given.

“Competency to dispose” has been considered above, p. 15. “Settled property” and “settlement” are defined in s. 22 (1) (h) and (i) respectively of the F. A., 1894, the reference in the latter to the Settled Land Act, 1882, being now replaced by one to s. 1 of the Settled Land Act, 1925,²¹ by which “settlement” includes any instrument under which property stands limited in trust for any persons by way of succession, or for any person for an entailed interest, or for an estate subject to an executory gift over, or in trust for a person contingently on the happening of any event, or for a married woman with restraint on anticipation, or charged with the payment of any rentcharge or annual or capital sum for the maintenance, etc., of any persons. The property is treated as settled even if the settlement comes to an end on the deceased’s death. “Property held under entail” in Scotland is not settled for this purpose.²² Ss. 22 (8) and 23 (19) of the F. A., 1894, provide that estates in dower or by curtesy (and in Scotland terce and curtesy) shall be treated as settled for this purpose and in practice an annuity simpliciter is so treated. “Party to a marriage” requires only a valid marriage; the exemption is not lost by divorce.

To secure exemption under s. 5 (2) or s. 21 (1) the following conditions must be fulfilled: (1) *the same property* must have paid E.D., etc., on the death of the first spouse to die as it is sought to exempt on the death of the second. Accumulations of income made since the first death are given the same exemption

²⁰ For the purpose of this sub-section this does not include a person not *sui juris* (F. A., 1898, s. 13).

²¹ Interpretation Act, 1889, s. 35 (except in Scotland, where, however, the same general principles would be followed).

²² F. A., 1894, s. 23 (14).

as the original corpus. In *Re Hall, Holland v. Att.-Gen.*²³ E.D. was held not to be payable on the death of a widow, life-tenant of realty under her husband's will, who had paid the E.D. exigible thereon on his death out of her resources, since the same unencumbered estate passed on each death, notwithstanding that in effect she had added the amount of the duty to the settled property.²⁴ This decision will not, it is thought, apply where the duty is paid out of money added by the life-tenant by a separate settlement. And where a widow in such circumstances pays off a mortgage on her husband's realty and releases her right of recoupment against his estate E.D. is payable on her death on the amount of the mortgage, which did not pay E.D. on his death. In *Re Heyes' Settlement, Heyes v. Att.-Gen.*²⁵ it was held that investments passing on the death of a widow under a settlement by her husband were exempt to the extent that E.D. had been paid on his death under s. 2 (1) (d) of the F. A., 1894, on her life-interest in moneys produced by policies on his life.²⁶ (2) The duty (if E.D.) must have been actually paid on the first death. Where the first payment was on part of the property the exemption is limited proportionally, in ascertaining which the actual, and not a strict, course of administration is followed.²⁷ Where

²³ [1942] Ch. 140, C. A.

²⁴ It was also held that the widow did not, by obtaining a charge on the property for the duty she had paid, become competent to dispose of a proportion of the estate, and that she did not make a gift not to her entire exclusion to the remaindermen of the amount of the charge.

²⁵ [1943] Ch. D. (not reported).

²⁶ Rejecting the Crown's contention that the property passing on the widow's death was not the same as that which had paid E.D. on the husband's death, when E.D. was paid on the widow's life-interest only; since *Westminster Bank, Ltd. v. Att.-Gen.* (above, p. 39), showed that E.D. is payable under s. 2 (1) (d) on the property itself, though only to the extent of the interest arising (there was no s. 2 (1) (c) claim in *Heyes* as the policies were fully paid when settled). The extent of the exemption is either the actual amount on which E.D. was paid or the proportion of the funds at the widow's death which that amount bore to the policy moneys (this was left open). This decision only applies to cases on all fours.

²⁷ *Re Dunseath, Shanks v. Att.-Gen.*, [1943] Ch. D. (not reported), where E.D. was held to be payable on the death of a widow, before the F. A., 1936, on five-eighths of a fund to provide an annuity to her under the will of her husband who died domiciled in Northern Ireland in 1922, such fund having been provided as to three-eighths out of his English estate.

an allowance has been made against the prior duty ²⁸ exemption is given as if the full duty had been paid without any allowance. A prior payment of United Kingdom duty at Dublin before the separation of Northern Ireland or Eire from the single exchequer (*i.e.*, on death before November 22, 1921, for Northern Ireland and April 1, 1923, for Eire) is sufficient and also, by virtue of the F. A., 1936, s. 25, a prior payment of E.D. in Northern Ireland where the second spouse dies on or after July 16, 1936. (8) Payment on the first death must have been made since the date of the settlement of *that property*, and the second death must occur during the continuance of the settlement, *i.e.*, there must have been a continuous settlement (though this may be a composite one) from the first to the second death inclusive. Thus if an absolute legacy is caught by a covenant to settle after-acquired property in a settlement it is not settled until after the testator's death, and payment of E.D., etc., on his death is not a payment since the date of the settlement of the particular property ²⁹, but exemption is given where the after-acquired property is acquired by way of settlement. Again, if E.D. is paid on a man's death on property settled by him (within five years of his death) on his wife for life, etc., no duty is payable on her death later; and this exemption is conceded to permit deduction against a man's estate of a sum which he had covenanted to pay on his death, with interest meanwhile, on trust for his wife for life, etc., if E.D. is payable on her death as the first to die. For the purpose of ss. 5 (2) and 21 (1)

²⁸ *E.g.*, under s. 20 of the F. A., 1894, s. 21 of the F. A., 1896, ss. 14 and 15 of the F. A., 1914, and s. 29 of the F. A., 1949; and a total or partial remission under the Acts relating to deaths in war (see below, pp. 166-70) is treated as a payment of the prior E.D. If no E.D. is paid because the property passing on the prior death did not exceed £2,000 in value, or because of exemption under s. 47 of the F. (No. 2) A., 1915 (see below, p. 165), there is no exemption on the later death. If duty was paid on a fund as a whole total exemption is given notwithstanding that one item may have been valueless on the first death (*cf. Re Cullinan*, [1941] Ir. R. 289). But the dicta in that case and in *Ld. Adv. v. Whyte's Trustees*, 1941, S. N. 66, that duty has been "paid" within the meaning of s. 5 (2) provided that the Revenue requirements have been met, even if no sum has been paid to the Revenue, are not followed.

²⁹ *Ld. Adv. v. Harvey's Trustees*, 1901, 4 Fra. 43. *Re Torrington (Viscountess)*, [1913] 2 Ch. 623.

duty is regarded as having been paid on the day of the relevant death, not on the date of actual payment.³⁰ (4) The second spouse must not have been competent to dispose at any time during the settlement. Thus if property is settled on A for life, remainder to B, and B settles his reversion on himself for life, etc., the payment of E.D. on A's death will not exempt from E.D. on B's subsequent death, since B was competent to dispose during the first settlement.³¹ In *Re Parsons, Parsons v. Att.-Gen.*,³² a husband disclaimed an absolute legacy under his wife's will so that it fell into residue, of which he was life-tenant but not competent to dispose. E.D. was held payable on his death on so much of the residue as represented the legacy, since he had been competent to dispose of the legacy during the settlement. And if a husband bequeathes his estate to his wife for life, remainder to their children as she appoints, and in default equally, and she acquires the share of a child predeceasing her under such child's will or intestacy, E.D. is payable on her death on such share, of which she was competent to dispose, notwithstanding that she may have later appointed the whole property to her other children.

A payment of duty in respect of an interest in expectancy is a payment in respect of the settled property.³⁴ But s. 55 of the F. (1909-10) A., 1910, prevented the application of s. 5 (2) or s. 21 (1) of the F. A., 1894, where the prior payment was in respect of such an interest, unless such payment was made on the death of the settlor. The F. A., 1914, s. 14, as stated, limited the exemption to cases where the two deceased persons were parties to a marriage, but preserved it in this case without reference to s. 55.³⁵ Consequently, if a claim would have arisen on the death of the second spouse, had the F. A., 1914, not been enacted, it is enforced unless the spouse first dying was the settlor

³⁰ *Att.-Gen. v. National Provincial Bank, Ltd.* (1933), 12 A. T. C. 133.

³¹ *Att.-Gen. v. Hay*, [1899] 2 Q. B. 245. Similarly, in *Att.-Gen. v. National Provincial Bank, Ltd.* (1933), 12 Ann. Tax Cases 133; 76 I. R. Rep. 13, where joint property of a husband and wife passing by survivorship paid E.D. on his death first on the proportion provided by him and the wife took a life-interest therein under his will under the doctrine of election, it was held that E.D. was payable on her death as she had been competent to dispose; it also appears that the property was not settled at the husband's death.

³² [1942] 2 All E. R. 496.

³⁴ *I. R. Commrs. v. Priestley*, [1901] A. C. 208.

³⁵ See the wording of s. 14 (a) of the F. A., 1914.

(applying s. 55 strictly), but if the claim would only have arisen because of the F. A., 1914, exemption is given even if the first spouse was not the settlor (*e.g.*, A dies 1906 having by will settled property on B for life, remainder to B's wife C absolutely: C dies in 1930 and E.D. is paid on her interest: on B's death in 1940 no E.D. is payable, as any such claim could only be made by invoking the F. A., 1914 (in view of the payment on A's death). But if A had made the same settlement *inter vivos*, so that no E.D. was payable on his death, E.D. would be payable on B's death independently of the F. A., 1914, and would be claimed as C was not the settlor). Thus if the first spouse to die is the settlor the payment on his death suffices; if he was not, then two payments are necessary, either (a) one on the death of some person other than the spouses and the second on the death of the first spouse, or, (b) if there was no such other person whose death was involved, on the deaths of both spouses. To see whether the possible claim on the death of the second spouse arises under or apart from the F. A., 1914, account is taken of s. 55 itself.

Where a wife in whose favour her husband has effected a policy on his life predeceases him and the policy is settled by her will or intestacy on him for life, exemption is given under this head on his death to the policy moneys to the extent of the actual sum on which E.D. was paid on her death; if the policy was fully paid at the wife's death it is wholly exempt on the husband's.³⁶

Scottish entailed estate is not settled property for the purpose of the F. A., 1894 (see s. 23 (14)), but s. 23 (16) provided that E.D., having been once paid on such estate, where the institute or heir of entail is only entitled to disentail with consent, should not again be paid until the death of an heir not requiring such consent or until the property is disentailed. The F. A., 1914, s. 14, abolished this exemption except in the case of parties to a marriage.

S. 21 (5) of the F. A., 1894, gave a further exemption, now

³⁶ In such cases the policy moneys are aggregable, even if they would otherwise be non-aggregable, with the other property of the husband, to the extent to which E.D. is payable, unless the rule in *Re Chesterfield's (Earl) Trusts* is excluded. If it is, no exemption is due under s. 5 (2), unless the policy moneys remain settled after the husband's death, as otherwise they have not been settled property.

nearly obsolete, to property to which a person succeeds for a limited interest on the death of his wife or her husband under a settlement made before the Act by such survivor.³⁷

(6) *Property reverting to disponent in his lifetime*.—S. 15 (1) of the F. A., 1896, exempts from E.D. property subject to a disposition which reverts on the relevant death to the settlor thereof³⁸ provided that (i) the settlor is then living, (ii) the deceased had an interest for his life, which (iii) was enjoyed in possession to the entire exclusion of the settlor or of any benefit to him by contract or otherwise, (iv) that the only benefit to the settlor was subject to the deceased's interest, and (v) that no other interest was created by the settlement.

S. 15 (2) applies this exemption to the case “where any such interest . . . is conferred on two or more persons, either severally or jointly, or in succession”, and s. 15 (3) provides that neither exemption shall apply where the person(s) taking the life or determinable interest had at any time prior to the disposition been competent to dispose of the property.

For “by contract or otherwise” see above, p. 28, and for “competent to dispose” see p. 15. To get exemption the interest must be determinable on the deceased's death (or alternatively on, *e.g.*, bankruptcy or remarriage), but an interest for the life of another, or for joint lives (unless both share the interest), will not suffice. Where there is a discretionary or protective trust, the group of possible beneficiaries may be treated as entitled jointly under s. 15 (2), but if the settlor was an immediate object of such trust this non-exclusion will prevent exemption. The exemption applies to an annuity or other interest less than the whole property, provided all the conditions are fulfilled *qua* that annuity or interest. A power of revocation to the settlor does not destroy the exemption in the sense of impairing the deceased's possession, but the receiving of any consideration by him does.³⁹ A merely contingent interest is an

³⁷ If the survivor becomes entitled in events to *capital* under the terms of the disposition the exemption is lost (*Att.-Gen. v. Strange*, [1898] 2 Q. B. 39, C. A.).

³⁸ *I.e.*, to him personally: it is not enough that it reverts to the settlor's alienee.

³⁹ *Ld. Adv. v. Lyell (Lord)*, 1918 S. C. 125; *Att.-Gen. v. Sandwich (Earl)*. [1922] 2 K. B. 500, C. A. In such a case s. 3 of the F. A., 1894, may give exemption (see below, p. 63).

“other interest” and prevents exemption.⁴⁰ An appointment under a limited power must be read into the instrument creating it to ascertain the “disposition”. Note that exemption is given only to the claim which would arise “by reason only of the reverter to the disponent”; if a claim arises under any other heading (*e.g.*, if the deceased was given a general power of appointment or of revocation) exemption is lost.

Whether s. 15 (2) applies cannot, in the case of successive interests, be ascertained until the death of the last “deceased”, and accordingly E.D. is levied on the prior death(s) and returned without interest on the last death if the disponent is then alive.

(7) *Property passing by reason only of purchase.*—S. 3 (1) of the F. A., 1894, exempts from E.D. property passing⁴¹ on death by reason only of a *bona fide* purchase (for full consideration in money or money’s worth paid to the vendor for his own use) from the person under whose disposition such property passes. This exemption extends, in somewhat wider terms, to the falling in of the reversion on a lease or the determination of an annuity, for lives, if granted for such consideration.

S. 3, it has been said, “is aimed at the kind of case where a person has bought something and paid for it at a price . . . but is not to get the benefit of his purchase until the death of his vendor”,⁴² though the deceased need not necessarily be the vendor. It is not stated who must be the purchaser, though it is implied that he is the beneficiary who would otherwise pay the duty. Thus the exemption applies to the simple cases where A sells for full consideration an estate to B as from A’s death,⁴³ or where A similarly buys a life-interest from B who retains the reversion. In each case the property passes on A’s death by reason only of the purchase from the settlor. Where the property is only “deemed to pass” (under s. 2 (1) of the F. A., 1894) there may be no settlor or disposition, and exemption is given provided the property is deemed to pass by reason only of the purchase. This is a paramount requirement. It is

⁴⁰ *Att.-Gen. v. Penrhyn* (1900), 83 L. T. 103; *Att.-Gen. v. Glossop*, [1907] 1 K. B. 163, C. A.

⁴¹ Which includes property “deemed to pass” (see above, p. 4).

⁴² *Per Darling, J.*, in *Att.-Gen. v. Dobree*, [1900] 1 Q. B. 442, at p. 450.

⁴³ *Re Bateman (Baroness)*, *Att.-Gen. v. Wreford Brown*, [1925] 2 K. B. 429.

not enough that it passes and that there was a purchase in connection with the disposition, unless the transaction, in its character as a purchase, was the sole cause of the passing. Thus policy moneys may be deemed to pass, notwithstanding that there is a contract for full consideration with the insurance company,⁴⁴ or that the beneficiary paid the last premium, without which they would not have been recoverable.⁴⁵ Where the deceased assigned a policy on his life for value and continued to pay the premiums total exemption is only earned if he received full value for the policy and the premiums afterwards paid by him : otherwise allowance is given for the amount paid by the assignee. There is no exemption under s. 3 merely because a life-interest or reversion is sold. Sales of interests in expectancy are dealt with below, p. 73.

Where a man transfers his business or a share therein to another within five years of his death, or provides that it shall accrue to that other on his death, E.D. is payable unless an actual payment for the benefit received is made by the donee. But if it is part of the arrangement that the donee must devote his whole time to the business, while the donor need not, the donee is treated as having purchased the goodwill, or the share thereof.⁴⁶ It should be remembered, however, that past services are no consideration. And where partnership articles provide that on the death of a partner goodwill or other assets shall pass to the survivors without payment, the resulting benefit must, it is thought, be treated as purchased by reason of the mutual expectations of the partners, if they are of approximately equal ages and have contributed equally to the partnership.⁴⁷ But no exemption is given merely because two or more persons make mutual settlements on each other : generally there is no real purchase transaction in such a case and, even if there were, the settlements would be additional factors preventing the passing's being by reason only of the purchase.

A settlement in favour of a wife made as a term of an agreement to separate will constitute a purchase to exempt property settled on her by her husband, with remainder to him or for the

⁴⁴ *Att.-Gen. v. Dobree*, [1900] 1 Q. B. 442.

⁴⁵ *Att.-Gen. v. Meech* (1931), 75 I. R. Rep. 12.

⁴⁶ *Att.-Gen. v. Boden*, [1912] 1 K. B. 539.

⁴⁷ *Cf. Att.-Gen. v. Ralli* (1936), 15 A. T. C. 523.

benefit of infant children,⁴⁸ but adult children and any other persons are volunteers.

There is no exemption where two persons of similar age purchase property as joint tenants, having equal chances of taking by survivorship : on the death of the first to die the property devolves by reason not only of the purchase but of the deceased's refraining from severing. Where two persons of about the same age purchase an annuity for the joint lives and the life of the survivor, providing it in equal shares and sharing it equally during their joint lives, s. 3 gives exemption on the death of the first to die. Similarly where two such persons pay equally the premiums on a policy in favour of the survivor. Where such an annuity or policy is purchased entirely by the first to die, E.D. is payable on his death on the value at such death of the annuity for the life of the survivor or on the whole of the policy moneys (except where an annuity was purchased five years before the death and was enjoyed equally, when the claim is limited to one-half by concession). Where such annuity or policy is provided by such persons in unequal shares, then (a) if the survivor was the larger contributor he is regarded as having purchased his benefit arising on the death of the first to die, but (b) if the first to die was the larger contributor then, as to policy moneys, the claim is on the proportion attributable to the premiums paid by the deceased, and as to annuities, (i) if the annuity was enjoyed wholly by the first to die the claim is on the proportion attributable to the amount provided by him, (ii) if it is enjoyed in proportion to the contributions the claim is on the proportion of the annuity attributable to the difference between the contributions (the proportion contributed by the survivor being set off against the corresponding part of that provided by the deceased), and (iii) if enjoyed equally the claim is limited to the proportion attributable to one-half such difference (since only one-half of what was not purchased passes).⁴⁹ These rules apply even if the annuity reduces on the first death, but there is no claim if the survivor then receives the same as, or less than, he received during the joint

⁴⁸ Exemption may be granted even if the settlement on the wife continues after the husband's death, this being common practice, although he is only bound to maintain her during his life.

⁴⁹ In cases (i) and (ii) the claim is on the proportion contributed by the deceased if the annuity was purchased within five years of his death.

lives. The criterion of enjoyment in these cases is the rights of the parties under their contract. Cases where the ages differ greatly must be treated on their individual merits. If in such a case the contributions were equal there is no claim on the prior death of the younger, but should the older die first there will be a claim on the proportion of the annuity representing the excess of his contribution over what he should have paid to purchase equality, having regard to his shorter expectation of life.

The word "purchase" when used in a Finance Act must be given its ordinary business meaning.⁵⁰ "Purchase for full consideration" means "a fair equivalent for what is received"⁵¹ of course "in money or money's worth", thus excluding, for example, marriage consideration. Its "first characteristic" is "a price paid out of the pockets of the purchasers".⁵² Consequently if property is given with a reservation of a life-interest or its equivalent in the shape of an annuity to the donor there is no purchase for full consideration, but only "a testamentary gift effected by the machinery of a present donation".⁵³ This may be so even where the annuity given in return exceeds the normal rate on the value of the gift.⁵⁴ It follows that in all such cases there is no allowance for part purchase in respect of any excess benefit: the case is in substance either a purchase, when there is no claim, or a gift, when there is no allowance.⁵⁵ But the exemption is not lost merely because the grantee makes

⁵⁰ *I. R. Commrs. v. Gribble*, [1913] 3 K. B. 212, at p. 220.

⁵¹ *Per* Hamilton, J., in *Att.-Gen. v. Boden*, [1912] 1 K. B. 539, at p. 561; and not necessarily an exact coincidence of value of the property passing and that of the obligations assumed; and cf. *Lethbridge v. Att.-Gen.*, [1907] A. C. 19, *per* Lord Macnaghten, at p. 25.

⁵² *Per* Lord Fraser in *Ld. Adv. v. M'Kersies*, 1881, 19 S.L.R. 438, at p. 440: a S.D. case.

⁵³ *Att.-Gen. v. Johnson*, [1903] 1 K. B. 617, C.A., *per* Vaughan Williams, L.J., at p. 627.

⁵⁴ *Ibid.*; where in addition there was an annuity in favour of the donor's wife as from his death and it was nevertheless held that s. 3 did not apply.

⁵⁵ Cf. *Att.-Gen. v. Holden*, [1903] 1 K. B. 832, *per* Ridley, J., at p. 837: "the fact that something was given in exchange . . . by the donee does not prevent the transaction from being a gift if one can see from the nature of it that it was intended as a gift".

a good bargain.⁵⁶ Each case must be considered on its merits. A family arrangement may also be in the nature of a purchase.⁵⁷ Giving up a mere *spes* is not a consideration within the section.⁵⁸ Where the basis of the transaction was not for full consideration within the section there is no exemption merely because a subsequent transaction effecting a change of investment or of security was by itself for full consideration.⁵⁹

In the case of annuities and leases it is only required that they shall have been granted for full consideration in money or money's worth paid to the grantor for his own use or benefit, or, as to leases, of a person for whom the grantor was a trustee, not that there shall be a purchase from the person under whose disposition the property passes. The exemption here is wider and is satisfied if the grantor received full consideration, etc., from someone, even if not from the annuitant or lessee.⁶⁰

It has been stated in a very large number of revenue cases that in all such the "substance of the transaction" must be looked at rather than the "forms of conveyancing".⁶¹ But it has also been said that this means only that any cloak designed to conceal what has been done may be torn away and not that, e.g., a deed which goes to the root of the beneficial interest may be ignored.⁶² And since *I. R. Commrs. v. Westminster*

⁵⁶ *Re Thornley*, [1928] Ann. Tax Cases 178. In *Att.-Gen. v. Kitchin*, [1941] 2 All E. R. 735, C. A., the deceased was granted a life-interest in property (previously irrevocably settled by him on others) as part of a compromise of his claim to revoke it and the Court awarded exemption under s. 3, since there was a *bona fide bargain*: the slight value of the deceased's claim was therefore irrelevant.

⁵⁷ *Lethbridge v. Att.-Gen.*, [1907] A. C. 19 (cf. *Re Bateman (Baroness)*, *Att.-Gen. v. Wreford Brown*, [1925] 2 K. B. 429).

⁵⁸ *Ld. Adv. v. Heywood-Lonsdale's Trustees*, 1906, 8 Fra. 724.

⁵⁹ *Att.-Gen. v. Smith-Marriott*, [1899] 2 Q. B. 595; *Ld. Adv. v. Lyell (Lord)*, 1918 S. C. 125. In *Att.-Gen. v. Gretton*, [1945] 1 All E. R. 628, the House of Lords held that E.D. was payable on the cesser of an annuity accepted by the annuitant in lieu of a larger annuity under a will which was disputed. It was the reduction of the annuity which was consideration for withdrawing opposition to the will, but the reduced annuity was given by the will, not by those disputing the latter, and it was not purchased.

⁶⁰ *Att.-Gen. v. Sandwich (Earl)*, [1922] 2 K. B. 500, C. A.

⁶¹ E.g., (to mention only Death Duty cases before the House of Lords or Privy Council), *Braybrooke (Lord) v. Att.-Gen.* (1861), 9 H. L. C. 150, at p. 182; *Lethbridge v. Att.-Gen.*, [1907] A. C. 19, at p. 26; *Att.-Gen. v. Montagu (Lord)*, [1904] A. C. 316, at p. 318; *Munro v. Stamp Duties Commrs.*, [1934] A. C. 61, at p. 65; *Att.-Gen. v. Gretton*, [1945] 1 All E. R. 628, at p. 636.

⁶² *Att.-Gen. v. Parr*, [1924] 1 K. B. 916, at p. 927.

(*Duke*),⁶³ where Lord Tomlin said that "Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it would otherwise be", it would seem that this doctrine is now limited to equate cases where the property or rights are the same apart from the actual forms used and cannot be applied to cases where they are actually different even though the substantial result may be the same. Documents must be given their true legal value, but "whether there was a bargain or not does not depend on the language the parties have thought fit to use".⁶⁴

S. 3 (2) of the F. A., 1894, gives exemption from E.D. where the consideration is only partial but where the facts are otherwise as mentioned in s. 3 (1). The exemption operates by allowing deduction of "the value of the consideration". To explain what is a *bona fide* purchase for partial consideration in money's worth has taxed the ingenuity of the Courts. Lord Atkinson in *Lethbridge v. Att.-Gen.*⁶⁵ thought that the subsection was directed to cases where the consideration is partly monetary and partly not.⁶⁶ Rowlatt, J., in *Re Bateman (Baroness)*⁶⁷ said that "the object of s. 3 (2) is to see how much . . . is passing by way of bounty and how much by way of purchase", but if there is bounty how can the property pass *by reason only* of the purchase. A third view—that s. 3 (2) refers to a complete purchase, with no element of bounty, for monetary consideration alone, but not for the full value—would infringe the rule that a sale is not vitiated merely because one party makes a good bargain.⁶⁸ Probably many cases which at first sight appear to come within

⁶³ [1936] A. C. 1 and see *I. R. Commrs. v. Wesleyan and General Assurance Society*, [1948] 1 All E. R. 555.

⁶⁴ *Crossman v. R.* (1896), 13 Q. B. D. 256, *per* Hawkins, J., at p. 265.

⁶⁵ [1907] A. C. 19, at p. 28.

⁶⁶ Marriage was held to be such consideration in *Re Lombard*, [1904] 1 Ir. R. 621, but this was disapproved in *Re Bateman* (see note 67).

⁶⁷ [1925] 2 K. B. 429, at p. 436, where the deceased settled property on herself with remainder to her son in return for an immediate payment by him which the Court found represented four-fifths of the value of the reversion: E.D. was held to be payable on one-fifth of the property passing.

⁶⁸ *Re Thornley* (1928), 7 A. T. C. 178, where Rowlatt, J., said that as there was no question of bounty a transfer of shares within the statutory period before the death at much less than real value would not make them liable to E.D. "The question . . . is not whether there has been a sale at an under-value, the overplus being dutiable . . . as a gift". And cf. *Att.-Gen. v. Kitchin*, [1941] 2 All E. R. 735, C. A., at p. 739.

s. 3 (2) are really within s. 3 (1). In others, *Re Bateman* affords the least unsatisfactory guide.

Annuities purchased from relatives.—S. 44 (1) of the F. A., 1940, removed (as regards deaths on or after June 27, 1940) any exemption given by s. 3 of the F. A., 1894, where the deceased had made a disposition of property to a relative (defined in s. 44 (2)) in return for an annuity (defined in s. 44 (3)) or other interest ceasing on death (*i.e.*, where the value of the annuity would otherwise be full consideration for the transfer of the property). The result was to make the property transferred by the deceased liable to E.D. under s. 2 (1) (c) of the F. A., 1894, as a gift not to his entire exclusion.⁶⁹ S. 44 (4) provided that where the transfer was to a company the section should apply if any member of the company was a “relative”.⁷⁰ S. 44 (5) applied this section to the payment of the annuity by means of “associated operations”.⁷¹

The exemption thus removed in these cases was partly restored by s. 40 (2) of the F. A., 1944, in cases where the donee had paid more in annuity than he had received in income from the gift, by allowing deduction, against the property liable, of the excess of the actual annuity payments over the aggregate income derived from the deceased, with interest thereon. The Third Schedule to the F. A., 1944, however, to prevent evasion, limited such deduction to payments not provided by the deceased: it also provided that the deduction should not exceed that given by s. 3 (2) of the F. A., 1894, where “relatives” are not involved.

It should be noted that these provisions do not apply where the transaction is not a purchase. Where it is, they assume that s. 2 (1) (c) of the F. A., 1894, taxed the property, which only escaped duty (before June 27, 1940) by reason of s. 3.⁷² If, however, there is no initial liability to duty, because there is no gift within the meaning of s. 2 (1) (c), then it is unnecessary to invoke s. 3, and s. 44 of the F. A., 1940, would have imposed no new liability. This last view was declared to be correct in

⁶⁹ See above, p. 27.

⁷⁰ “Company” is defined in ss. 58 and 59, and “member” in s. 59 of the F. A., 1940.

⁷¹ “Payment” and “associated operations” are defined in s. 59.

⁷² On the view enunciated in *Att.-Gen. (Ir.) v. Smyth* (above, p. 26).

*Re Earl Fitzwilliam's Agreement, Peacock v. Commrs. I. R.*⁷³ Consequently s. 46 (1) of the F. A., 1950, rewrote s. 44 (as to deaths after April 18, 1950) by providing that any disposition by the deceased in favour of a relative should be treated as a gift within s. 2 (1) (c) of the F. A., 1894, unless made for full consideration in money's worth; and further that, if made for partial consideration, the value of the consideration should be allowed as a deduction against the value of the property; but that for this purpose the creation in favour of the deceased of an annuity or other interest limited to cease on his or any other person's death should not be treated as consideration. S. 46 (1B) repeated the application of s. 56 (1) of the F. A., 1940, to this section; and s. 46 (1c) enacted that any gift made in favour of a relative of the deceased by a company of which the deceased had control within the meaning of s. 55 (3) of the F. A., 1940, should be treated for the purpose of s. 2 (1) (c) of the F. A., 1894, as made by the deceased.

Application of s. 3 where a company is concerned.—S. 56 (1) of the F. A., 1940, provided that where a company⁷⁰ is concerned in the purchase transaction, or in any associated operations,⁷¹ s. 3 of the F. A., 1894, should only apply if, and to the extent that, the Commissioners are satisfied that it would apply if the company's assets had been held on trust for its members⁷⁰ (and any other persons to whom it is liable for other than a purely business debt⁷⁴) in accordance with their respective rights. The legal entity of the company must thus be disregarded. These provisions are of particular, but not exclusive, relevance to claims under s. 46 of the same Act (see above, p. 47). But for s. 56 (1) no claim under s. 46 could arise where the transfer to the company and the receiving of benefits are both purchase transactions. It does not follow, however, that s. 56 (1) creates liability in all such cases. If, after removing the façade of the company, there is still a purchase transaction between the deceased and others (which there is not in the ordinary case of the transfer by him of his property to the company in return for shares in the company allotted to himself) there will generally be no liability to duty under s. 46. S. 56 (1) may also apply to

⁷³ [1950] 1 All E. R. 191.

⁷⁴ By s. 51 (4) of the F. A., 1940, unreasonable remuneration is not such a debt.

prevent exemption in other cases, *e.g.*, a passing under s. 1 of the F. A., 1894.

(8) *Small annuities*.—By s. 15 (1) of the F. A., 1894, as amended by s. 33 (1) of the F. A., 1935, E.D. is not payable in respect of a single annuity not exceeding £52⁷⁵ purchased or provided by the deceased, or by him in concert or arrangement with another person, for the life of himself and another and the survivor, or to arise on his death in favour of another. By s. 33 (2) an annuity of less than £104 which would, if not exceeding £52, be exempt under these provisions is chargeable as if it were one of twice the amount by which it exceeds £52 and the said provisions were not in force. Thus an annuity of £53 is taxed as an annuity of £2.

If there is more than one such annuity the one first granted is alone exempt. All annuities to the same person are treated as a separate group for this purpose, so that each grantee can claim exemption or reduction for one annuity. If his first annuity is exempt he cannot claim reduction for a later one, but if the first is (or any number are) entitled to reduction under s. 33 (2) the next one not exceeding £52 is exempt. Where only part of an annuity is liable under s. 2 (1) (*d*) the whole annuity is the amount for deciding whether these provisions operate.⁷⁶ This exemption applies in terms to annuities liable under s. 2 (1) (*d*) of the F. A., 1894, but in practice is conceded where the claim is under s. 1 thereof, and is applied to deaths subsequent to that of the provider if the annuity then passes.

(9) *Government pensions* payable to widows of Army, Navy and Air Force Officers are not charged with E.D., nor are those payable to widows and children of certain colonial Government servants.⁷⁷

⁷⁵ Where the deceased died before July 10, 1935, this provision applies only to annuities not exceeding £25 and any annuity exceeding £25 is taxable in full.

⁷⁶ Thus if E.D. is payable on half the annuity it is immaterial that such half is between £52 and £104: s. 33 (2) does not apply in such a case. If the whole annuity is between £52 and £104 and the claim is on half, duty is payable on half the annuity as reduced by s. 33 (2), *i.e.*, on the amount by which the whole annuity exceeds £52.

⁷⁷ S. 15 (3) of the F. A., 1894, exempted pensions payable by the (former) Government of British India (extended in practice to provincial governments).

(10) *Church patronage* is likewise exempt under s. 15 (4) of the F. A., 1894.⁷⁸

(11) *Gifts for national purposes.* (a) By s. 30 (2) of F. A., 1928, property directed to be immediately accumulated and applied with the accumulations in reduction of the national debt is exempt from E.D.

(b) By s. 30 (3) an absolute gift *inter vivos* to the National Debt Commissioners is exempt from E.D.

(c) By s. 40 of the F. A., 1931, as amended by s. 31 (6) of the F. A., 1937, where the whole estate or interest of a donor or testator in any land is given (either immediately, or subject to the life-interest of the disponent, and/or of his spouse or issue, provided the interests of the latter arise simultaneously and without provision for accruer) to the National Trust,⁷⁹ to be held inalienably, no duty is payable with reference to his death.⁸⁰ By s. 31 of the F. A., 1949, property given, with an estate given to the National Trust or the National Trust for Scotland, for the upkeep of such property is similarly exempted so far as in the opinion of the Commissioners it is required for such upkeep. Similar conditional remission may be granted in the same circumstances where the beneficiary is the Minister of Works or a local authority accepting the same as an ancient monument,⁸¹ in the case of a death on or after July 31, 1931 (F. A., 1931, s. 40).

(12) *Objects of "National, scientific, historic or artistic interest"* (not yielding income) which appear to the Treasury to be such, are exempted from duty, while enjoyed in kind,⁸³

⁷⁸ See also *Att.-Gen. v. Peek*, [1913] 2 K. B. 487.

⁷⁹ The F. A., 1936, s. 27, extends this to the National Trust for Scotland.

⁸⁰ In the case of deaths on or after July 31, 1931 (or as regards the National Trust for Scotland, July 16, 1936) and before July 30, 1937, exemption is conditional on approval by the Treasury and is only given where the whole interest of the disponent is indefeasibly vested in the National Trust to be held inalienably.

⁸¹ Under s. 2 of the Ancient Monuments Consolidation and Amendment Act, 1913.

⁸³ This is a question of fact: it is immaterial that they are subject to a trust for sale or that the beneficiary is tenant in tail or absolutely entitled.

and their value is not to be aggregated with the other property passing on the death (s. 40 (1) and (3) of the F. A., 1930). By s. 40 (2) duty on the sale of the objects becomes payable on the (net⁸⁴) proceeds of sale in respect of the last death on which the property passed, and at the rate appropriate to the principal value of the estate (*i.e.*, the other property) passing and with which the objects would have been aggregated; but no duty is payable if the sale is to a national institution, university, county council or municipal corporation or the National Art Collections Fund.⁸⁵ S. 48 (1) of the F. A., 1950 denies this exemption unless an undertaking is given that the articles in question will, until their sale or passing on another death, be kept permanently in the United Kingdom and that reasonable steps will be taken for their preservation. Application for exemption should be made to the Controller, Estate Duty Office, stating the grounds of exemption sought, with a full inventory with approximate value and the address at which the articles can be inspected.⁸⁶

By s. 15 (2) of the F. A., 1894, the Treasury may remit the duty in respect of articles which appear to them to be of national, scientific or historic interest given or bequeathed for national purposes or to a university, county council or municipal corporation, and no such property is aggregable with the other property passing. No duty is payable on a subsequent sale of such property.

(13) *Reversions sold or mortgaged before the relevant charging Acts.* S. 21 (3) of the F. A., 1894 provided that where an interest in expectancy had been *bona fide* sold or mortgaged for full consideration in money's worth before that Act then no other duty on the property concerned should be payable by the purchaser or mortgagee, when the interest fell into possession, than if the Act had not passed, and that any higher duty payable by the mortgagee should be a charge subsequent to that of the mortgagee.

⁸⁴ *Tyser v. Att.-Gen.*, [1938] Ch. 426.

⁸⁵ Or the "Friends of the National Libraries" (F. A., 1936, s. 26).

⁸⁶ Earlier and less wide provisions were contained in the F. A., 1896, s. 20, F. (1909-10) A., 1910, s. 63, and F. A., 1921, s. 44.

Similar provisions were contained in later Finance Acts protecting purchasers and mortgagees from extensions of E.D. or aggregation or increases in rate imposed by those Acts. The relevant Acts are:—

	<i>Sale or mortgage before</i>		
F. A., 1900, s. 12 (1)	April 9, 1900
F. A., 1907, s. 12	April 19, 1907
F. (1909–10) A., 1910, s. 64 ⁸⁷	April 30, 1909
F. A., 1914, s. 16 ⁸⁷	May 11, 1914
F. A., 1919, s. 29 ⁸⁷	April 30, 1919
F. A., 1925, s. 22 ⁸⁷	April 28, 1925
F. A., 1927, s. 51 ⁸⁷	April 11, 1927
F. A., 1930, s. 38 ⁸⁷	April 14, 1930
			(but not where the claim is under s. 35 of the F. A., 1930).
F. A., 1939, s. 29 ⁸⁷	April 26, 1939
F. (No. 2) A., 1939, s. 23 ⁸⁷	Sept. 28, 1939
F. (No. 2) A., 1940, s. 17	July 24, 1940

An “interest in expectancy” is defined by s. 22 (1) (j) of the F. A., 1894. Thus a policy on the life of a living person is excluded,⁸⁸ also realty and leaseholds charged with an annuity.⁸⁹

To ascertain whether exemption or relief is due the statutes in operation at the date of the relevant sale or mortgage are to be considered (except that any relief given by a later Act is not to be withheld), but they must be applied to the facts as they have actually happened; it will not do to project the death back to the relevant date. The benefit, where earned, may amount to total or partial exemption from duty or liability at a

⁸⁷ These sections were repealed by s. 42 (8) of the F. (No. 2) A., 1940, so far as they relate to increases in the rate of E.D., and were replaced by s. 17 (1) of that Act in the form of a comprehensive provision on the same lines applicable to all increases in rate, past and future. By s. 17 (2) thereof, s. 56 (1) of the F. A., 1940 (see above, p. 70), is applicable to this provision where a company is concerned. Subsequent increases in “the rates of duty” were contained in the F. A., 1946, and the F. A., 1949, as to deaths on or after April 10, 1946, and July 30, 1949, respectively.

⁸⁸ Cf. *Re Fisher*, [1943] W. N. 195.

⁸⁹ Cf. *Att.-Gen. v. Lane Fox*, [1924] 2 K. B. 498. Nor is pure personality subject to an annuity an interest in expectancy (Cf. *Re Holliday, Houghton v. Asland*, [1947] Ch. 402), but a fund specifically set aside to produce an annuity is treated as such an interest.

lower rate (either under an earlier scale or under an earlier provision as to non-aggregation). It is limited to the property or share sold or mortgaged. If it involves non-aggregation of the interest which would otherwise have been aggregated, such interest must still be taken into account for ascertaining the rate on other aggregable property, under any title, unless the relief involves complete exemption. In deciding the aggregation or otherwise of the property entitled to relief, it may be necessary to apply the earlier Acts to other property passing on the death (but not for determining *the latter's* aggregation). A share of an interest in expectancy sold or mortgaged within these provisions is entitled to relief to the extent of such share. In the case of a mortgage only the mortgagee is protected and accordingly no exemption or relief is given unless the mortgage exhausts the value of the property when the interest falls into possession⁹⁰ (ignoring any later sale price). A clear sum purchased out of the interest in expectancy is not "sold" within these provisions, unless it absorbs the whole interest; otherwise it is treated as a mortgage. If the mortgage had been foreclosed, it is treated as a sale. If the interest sold or mortgaged is freed by the disposition itself from the duty payable on the death by which it falls in it is not entitled to relief, which is for the benefit of the purchaser or mortgagee only.⁹¹ Where one reversion is mortgaged several times it must be ascertained which mortgage exhausts, with the earlier mortgages, the property in the above sense and the relieving Act at the date of such mortgage is the operative one. Where several reversions are included in one mortgage the earliest to fall in are entitled to relief until, on the basis indicated, the full amount of the mortgage and interest is reached, when relief ceases. If after a mortgage the interest is sold by the mortgagee and there is no surplus payable to the mortgagor relief is given as from the date of the mortgage, but if there is a surplus, from the date of the sale only; if after a mortgage the mortgagor sells the equity the date of sale is the relevant date. Where the mortgage does not absorb the value of the reversion, but the equity is not sufficient to pay the whole duty, the reversion must be applied in the following order: (a) to

⁹⁰ *Re Vernon*, [1901] 1 K. B. 297.

⁹¹ But where property is given to A for life, remainder subject to certain legacies free of duty to B, who sells, etc., his interest, relief (if any) is given to the legacies as well as to the balance which B sold.

the duty under the Acts prior to the mortgage; (b) to the mortgage; (c) to the duty under the Acts subsequent to the mortgage. A mortgage includes a judgment debt; an adjudication order in bankruptcy is treated as a sale; a receiving order is neither. If there are several sales, relief is given as from the first. An exchange of property is not a sale for the purpose of these provisions. The full relief is given where the interest sold or mortgaged in terms of these provisions is a life-interest only. Where the interest is subject to two prior life-interests full duty is levied on the death of the first life-tenant and repaid or reduced, without interest, on that of the second, if these provisions apply.

(14) *Sailors, soldiers and airmen* may be entitled to special exemptions : see below, p. 166.

(15) *Non-British property* is exempt in certain circumstances : see below, p. 161 ff.

(16) *Special exemptions relating to gifts inter vivos.*

S. 59 (2) of the F. (1909-10) A., 1910, exempted from E.D. gifts *inter vivos*

(a) made in consideration of marriage, or

(b) which were part of the deceased's normal expenditure *and* were reasonable, having regard to his income or the circumstances, or

(c) which did not exceed £100 in aggregate value in the case of each donee.

S. 33 of the F. A., 1949, preserved these exemptions and also exempted gifts not exceeding £500 in aggregate value in the case of each donee if the Commissioners are satisfied (a) that no interest in settled property was taken, and (b) that the deceased was thenceforward excluded (in the sense of s. 38 (2) (a) of the 1881 Act, as amended in 1889).⁹²

These exemptions apply to all gifts (and as to gifts not exceeding £100, whether to the entire exclusion of the deceased or not), but not to settlements with a reservation,⁹³ *donationes mortis causa* or determinations of life-interests within s. 43 of the F. A., 1940. Nor do they apply where there is any other heading of

⁹² See above, p. 28. If conditions (a) and (b) are satisfied as to only some of the gifts, the exemption can apply to them only.

⁹³ *Re Cochrane's Settlement Trusts*, *Cochrane v. Turner*, [1945] Ch. 285, C. A.

liability besides gift, *e.g.*, an actual passing under s. 1, cesser of interest under s. 2 (1) (b), survivorship in joint tenancy, payment of policy moneys on death, etc.

“In consideration of marriage” refers to the marriage of donor or donee and includes “in contemplation of marriage”, but the marriage must actually take place. This exemption extends to ante-nuptial settlements and to property transferred at a later date in pursuance of a covenant in such a settlement.⁹⁴

To be exempt as part of the deceased's normal expenditure there must have been a habit of giving, and this in fact and not merely in intention. A single gift is not exempt merely because it did not increase the donor's expenditure in the year in question. The nature of the gift and the class of donees concerned may have to be taken into account. It is not necessary that the gifts shall have been made to the same person or that they are of the same amount or are made at regular intervals. But a habit of making gifts of one kind to donees of the same character over a period of time is enough to secure exemption for those gifts (provided they are also reasonable), though it may not exempt others of another kind or made to a different class of donee or for a different purpose.⁹⁵

“Reasonable” involves consideration of the deceased's income, his style of living, and any special reasons or moral obligations for making the gifts.

Note that the requirements of normality and reasonability are not alternative. Both must be fulfilled.⁹⁶

To ascertain whether a gift exceeds £100 or £500, the value at date either of gift or of death is taken, although if the gift is liable it is taxed on its value at the death under s. 7 (5) of the F. A., 1894. This exemption would extend to the moiety of joint real or leasehold property (purchased by the deceased within five years of his death in the joint names of him and

⁹⁴ But if the covenant was not fulfilled at the covenantor's death this provision does not overrule the principle that the covenanted sum is not deductible against the covenantor's estate (see below, p. 116).

⁹⁵ In *Att.-Gen. (N. Ir.) v. Heron* (not reported), Lowry, J., said that “normal” referred to type, not amount, and denoted conformity to a standard.

⁹⁶ The Commissioners must be satisfied as to this. In the *Heron Case* (above, note 95), Andrews, L.C.J., said that if the Ministry decided this *mala fide* or with bias or in some grossly illegal manner, appropriate proceedings could doubtless be taken, but it was not bound to hold a formal inquiry.

his wife or child) as to which there is an immediate advancement. In applying these special exemptions only gifts within the statutory period need be considered, though earlier ones may be invoked to prove a habit of giving. Gifts which are exempt for any reason, whether under s. 59 (2) or otherwise, may seemingly be omitted from consideration when deciding whether the remaining gifts exceed £100 or £500. But as regards exemption on the ground of value, the £500 limit includes that of £100: the "ceiling" is raised in appropriate cases from £100 to £500, not to £600. (See also p. 72, above, as to gifts for national purposes.)

(17) *Non-liability under the principle of Re Townsend*.⁹⁷—This is not strictly an exemption, but means that where the same person enjoys the same property or its income immediately before and after the death there is no actual passing under s. 1 of the F. A., 1894, or cesser of interest under s. 2 (1) (b). Thus if property is settled on A and B equally during their joint lives, with remainder to the survivor for life, E.D. is payable on one-half only of the property on the death of the first to die, notwithstanding that the interests of both in the whole property during the joint lives cease on such death. In *Re Townsend* was a decision on s. 2 (1) (b), but the principle applies equally to cases within s. 1.⁹⁸ But it does not apply to claims under s. 2 (1) (a), (c) or (d),⁹⁹ which impose a separate liability apart from any actual passing or cesser of interest, or to cases of annuities ceasing, where the property passes as a whole, as in *Cowley (Earl) v. I. R. Commrs.*¹ where s. 5 (3) gives no exemption; and it will not prevent a claim where the person entitled to the interest immediately after the death was merely the object of a discretionary trust ceasing on the death, or *vice versa*, even if in fact he received the whole income under such discretionary trust.² But it is conceded that the capital to produce an annuity to another person ceasing on the

⁹⁷ [1901] 2 K. B. 331.

⁹⁸ See *Att.-Gen. v. Lloyds Bank, Ltd.* [1935] A. C. 382, at p. 396.

⁹⁹ As regards s. 2 (1) (d) claims the fact that the beneficiary entitled on the deceased's death was entitled in possession before may mean that no new interest arises, and so no s. 2 (1) (d) claim, or that the benefit arising is by way of enlargement only (see above, pp. 38, 54).

¹ See above, pp. 45, 56.

² *Burrell v. Att.-Gen.*, [1937] A. C. 286.

deceased's death may be set off against the capital to produce a further annuity to the same person starting on the deceased's death, if the annuities are charged on the same property.

For the purpose of ascertaining liability where *Re Townsend* applies it is the practice to throw the whole of the interest which any person had before the deceased's death against the interest of that person after the death and to charge duty on the difference, which is what changes hands. Thus if property is settled on A and B equally, and on the death of A first to B, C and D equally, E.D. is payable on A's death on his one-half passing to B, C and D and on one-sixth passing from B to C and D.³ The same principle is applied where a person has a life-interest or annuity and also becomes entitled, on the later death of another life tenant, to the fund or a share of it (*e.g.*, property is settled on A for life, subject to an annuity to B with remainder to B and C equally: it is conceded that the E.D. paid on B's death in A's life on the capital to produce his annuity franks *pro tanto* the reversion in one-half expectant on A's death from E.D. in B's own estate). But in ascertaining the extent of an exemption under s. 5 (2) of the F. A., 1894, an annuity must be regarded as coming rateably out of the whole property on which it is charged.⁴ Thus if property is settled on A for life, subject to pin-money to his wife, with a jointure to her of larger amount as from his death, E.D. is payable on his death on the fund less the "slice" for the pin-money and therefore on his widow's death E.D. is payable on a proportion of the "slice" for the jointure corresponding to the proportion of the fund which escaped duty on A's death. Similarly, if, instead of pin-money, the fund were charged with an annuity to a third party who died after A and before A's widow. Where property is settled on A for life and on his death to pay an annuity to his widow and subject thereto to B for life, and there is an accretion to the fund between the deaths of A and his widow, E.D. is payable on the latter's death on her annuity "slice" so far as attributable to the accretion (unless a capital was set aside on A's death and retained for the annuity, when s. 5 (2) clearly applies). If, however, the first spouse to die had an annuity only, and the

³ In this case the one-sixth share will not be aggregable as A had no interest in it.

⁴ *Skinner v. Att.-Gen.*, [1940] A. C. 350.

survivor the same or a smaller annuity, the "slice" on the second death would be regarded as the same as, or as part of, that on the first death.

(18) *Public subscriptions*.—No claim for E.D. is raised on the death of a life-tenant, etc., under a disposition by persons who have raised a voluntary public subscription for a person for his life, etc., with remainders over; but this does not apply where the fund was provided solely by a company, or was handed to an individual who then settled it on the beneficial owner.

(19) *Exemption under s. 7 (10) of the F. A., 1894*.—This subsection provides that on any particular death property shall only once be aggregated and E.D. only once levied on it. This is not a truism, for cases often arise where, but for its operation, duty might in strictness be leviable twice on the same property or on two forms of the same property.⁵ Where the property is the same in substance and form there is no difficulty. Thus if the deceased within five years of his death gave shares to a donee who later gave or sold them back to the donor duty could not be charged on the donor's death on the shares both as gift and as free estate.⁶ Similarly, if they were again given away by the donor before his death, duty would be charged on the second gift only. But where the property is theoretically liable in one form under one heading of liability and in another form under another heading, difficult questions may arise. S. 22 (1) (f) of the F. A., 1894, defines "property" as including real and personal property and the proceeds thereof and any money or investment representing such proceeds. If, in the example just given, the donor sold the shares after receiving them back from the donee, no exemption would be earned merely because the proceeds had swollen his estate, unless they could be earmarked. If a reversioner mortgages his reversion to the life-tenant the inclusion of the mortgage in the latter's estate would not exempt the settled property from duty as passing under the settlement. Similarly where a policy,

⁵ In *Re Payne, Poplett v. Att.-Gen.*, [1939] Ch. 865, at pp. 875-6, Simonds, J., said that "s. 7 (10) . . . can have no operation except in respect of the same property", but presumably the same property might have different forms.

⁶ If they were *lent* to the deceased, s. 31 of the F.A., 1939, would be applicable (see below, p. 118).

effected by a man for the benefit of his wife, is mortgaged by him for his benefit, no relief seems due unless the mortgage money is clearly reflected in his estate. E.D. paid on the capital value of the property under ss. 2 (1) (b) or 2 (1) (c) of the F. A., 1894, will cover any separate claim of less extent under a different heading (e.g., ss. 1 or 2 (1) (d)) on a benefit arising out of the same property⁷: but different properties cannot be set off one against the other merely because one passes from A to B and the other from B to A on the death of X.

Note that s. 7 (10) does not apply to prevent E.D. being paid both in respect of property passing on the death of a life-tenant and in the estate of a predeceasing reversioner in respect of his interest in expectancy, as the duty on the latter is payable in connection with the reversioner's death, although payment may be deferred until the death of the life-tenant.⁸

(20) *Post-War Credits* in respect of income tax are exempt from death duties on any death before the crediting date (F. A., 1941, s. 7 (4)); those in respect of Excess Profits Tax are conceded the same exemption. Where application after attaining the due age has been made there is no exemption on the subsequent death of the applicant before payment.

(21) *Allowances of other duties against E.D.*

(a) *By s. 29 of the F. A., 1949*, the rate of E.D. payable for the first time (only) after the commencement of that Act on settled property passing on the death of a person not competent to dispose thereof is to be reduced by the rate of any L.D. or S.D.⁹ previously paid on the capital value thereof. If the last-mentioned rate was the higher, the E.D. is to be treated as satisfied and any excess is repayable *on application*. This "allowance", as the Act terms it, was necessary, in view of its abolition of L. and S.D., to secure equality as between estates where such duty had been paid on the life-interest only of the deceased life-tenant (on whose death after the Act no further L. or S.D. would be payable) and those where duty had been paid on the capital (by reason of the beneficiaries' being all

⁷ Cf. *Att.-Gen. v. Johnson*, [1903] 1 K. B. 617, where, E.D. being payable on the capital of the sum given under s. 2 (1) (c), no s. 1 claim was made on the value of the annuity passing to the donor's widow.

⁸ See *Att.-Gen. v. Smith*, [1923] 2 K. B. 531.

⁹ For a summary of these duties see below, p. 173 ff.

liable at the same rate). The section is construed as if the words "competent to dispose" were followed by "at his death". The interests which paid L. or S.D. must have been created by the same settlement as that under which the property passes on the later death; a resettlement is not the same settlement unless executed under a power in the original settlement or unless it merely restores the latter's terms. Where the property has (before the death in question) already passed on another death after this Act without liability on that other death to E.D. for any reason other than the operation of this section (*e.g.*, s. 5 (2) of the F. A., 1894, or the value of the property not exceeding £2,000, or the provisions relating to dual taxation or to deaths in war) such earlier death is ignored and the section is applied to the later death if the other conditions are fulfilled.

In calculating this allowance the *effective* rate of L. or S.D. paid must be ascertained; in cases of composition, commutation or remission on account of death in war this will be less than the nominal rate. Where part only of the property on which L. or S.D. has been paid passes for E.D., the allowance is to be calculated as if the same proportion had passed on the first death. Any repayment is deemed an accretion to the fund out of which the L. or S.D. was paid and the persons entitled to repayment are to be determined accordingly (s. 29 (3)).¹⁰ The form for claiming repayment is J (or in Scotland U), to be obtained only from the Estate Duty Office, London or Edinburgh. The application should be sworn.

As regards deaths before July 30, 1949, s. 21 of the F. A., 1896, authorised allowance, against E.D. payable on settled property, of (i) any L. or S.D. at 1 per cent, (ii) the additional S.D. at $\frac{1}{2}$ or $1\frac{1}{2}$ per cent,¹¹ and (iii) the "Temporary" E.D.,¹² paid or payable before the F. A., 1894, on the capital of that property under the same will or disposition. S. 15 of the F. A., 1907, provided a simplified form of calculation of this allowance, which was due (where all the conditions were fulfilled) even if it had

¹⁰ Which also provides that where the fund is held by the beneficiaries repayment may be made to the beneficiary or any of the beneficiaries for the benefit of all of them. Normally application should be made by the trustees, where there are such.

¹¹ See below, p. 174.

¹² See below, p. 179.

been given on an earlier death. This allowance was abolished by the F. A., 1949,¹³ except where due for "Temporary" E.D. paid as an addition to P.D. or A.D.

(b) *By s. 14 (b) of the F. A., 1914*, on the first occasion on which E.D. becomes payable in respect of any property which would not have been payable but for s. 14 (see above, p. 57), any Settlement Estate Duty paid on such property is to be allowed against such E.D., and any excess is to be repaid to the estate. Where the E.D. claim arose apart from the F. A., 1914, e.g., because the deceased had become competent to dispose, no allowance can be given.

The excess S.E.D. is repaid without application in England, but in Scotland application should be made on Form No. 18.

By the same proviso interest at the appropriate rate¹⁴ on the S.E.D. so allowable, from August 15, 1914, to the date of the death which occasions the above-mentioned allowance is to be paid to the persons or their representatives who would have been entitled to the income from such S.E.D. if it had on August 15, 1914, been added to the capital of the settled property and is to be divided among such persons or their representatives according to the interests they would have had in such income. The recipients of the repaid interest are thus not necessarily the persons who would have received additional income if the S.E.D. had never been charged: in most cases it will go to the representatives of the deceased life-tenant, whether his interest was free of duty or not,¹⁵ but not to those of a deceased annuitant whose annuity was free of duty, as he could never have received more than his annuity.¹⁶ Application for repayment of such interest should be made on Form No. 38, or in Scotland, Form No. 18A.

(22) "*Quick Succession*" allowance.—By s. 15 of the F. A., 1914, the E.D. payable on any land and business,¹⁷ or any interest therein, upon the death of a person to whom the same passed on a prior death and then paid E.D., shall be reduced by 50, 40, 30, 20, or 10 per cent. respectively according as the second death occurred within one, two, three, four or five years of the

¹³ Eleventh Schedule, Pt. IV (repeal of part of First Schedule of the F. A., 1894).

¹⁴ See below, p. 126.

¹⁵ *Re Sutherland (Duke)*, *Chaplin v. Leveson-Gower*, [1922] 2 Ch. 782.

¹⁶ *Re Grinlinton*, *Public Trustee v. Grinlinton*, [1933] Ch. 345.

¹⁷ Other than one carried on by a company, public or private.

first. No allowance is due if the interval exceeds five years. Where the value on the second death exceeds that on the first death the section provides that the allowance shall be calculated on the lower value: the excess is chargeable at the full rate. It is immaterial what *rate* was chargeable on the first death, or that duty on that death was reduced or entirely covered by an allowance under some other heading.¹⁸

The property must pass on the first death to the second deceased: it is not enough that it passes on both deaths, *e.g.*, because the second deceased purchased it from the estate of the first. If property is given by the will of A to B for life, remainder to C, the allowance is given on the deaths of B and C within five years of A, even if C dies in B's lifetime (as C's reversion is treated as having passed on A's death to C); but if B and C both survive A by five years and C then dies and B dies within five years of C's death, no allowance can be claimed unless C's interest passed under his will or intestacy to B. Property accruing under s. 33 of the Wills Act, 1837, to the estate of a pre-deceasing son, etc., of a testator is given a 50 per cent. allowance in connection with the former's death.

The same property (or some part thereof) must pass on both deaths. Land taken in exchange and subject to the same uses as the original settled land is treated as the same property. Capital moneys are neither land¹⁹ nor an interest in land and are therefore not the same property as the land whose proceeds they represent or which has been bought with them. Mortgages and (in Scotland) heritable bonds, portions and other capital charges are not interests in land for this purpose.²⁰

A business includes the usual business assets, but not the proceeds of the sale thereof or any investments representing surplus funds or capital left in the business on loan.²⁰ It includes the excess of book debts over debts owing by the firm and any bank balance proceeding from the business itself. The separate items (stock-in-trade, etc.) are treated separately as the same

¹⁸ If an allowance for another duty (*e.g.*, under the F. A., 1914, s. 14, or the F. A., 1949, s. 29) is due on the second death, the "quick succession" allowance is calculated first and the other allowance given against the E.D. so reduced.

¹⁹ *Middleton (Earl) v. Cottesloe (Baron)*, [1949] A. C. 418.

²⁰ Cf. *Glen v. I. R. Commrs.*, 1925 S. L. T. 657; 1926 S. C. 44.

property, notwithstanding that the individual articles making up such units may have changed in the interval.

Where land or a business, or a share thereof or of the proceeds, is subject to a trust for sale (express, statutory, or implied) and passes on a death before actual sale, the allowance is given on a second death if the property has then to be valued to determine the quantum liable to duty²¹ (which is not the case if it has been previously sold or contracted to be sold²²).

(23) *Dual Taxation Relief.*

(a) *As between Great Britain and British possessions.*—By s. 20 of the F. A., 1894, duty payable on the death of the deceased in respect of property in any British possession²³ to which that section has been applied is deductible against the E.D. payable in respect of the property on the same death. This section has been applied by Order in Council²⁴ to the following possessions in which either no duty is payable in respect of British property or a reciprocal allowance is made :—

Aden (excluding the Protectorate)	Fiji
Australia, Commonwealth of	Gambia and Gambia Protec-
Bahama Islands	torate
Barbados	Gibraltar
Basutoland	Gold Coast Colony
Bechuanaland Protectorate	Grenada
Bermuda	Hong Kong
British Columbia	India (excluding Feudatory
British Guiana	Native States, even though
British Honduras	they have acceded)
Brunei	Jamaica
Ceylon	Kenya Colony and Protectorate
Dominica	Labuan
Falkland Islands	Leeward Islands
Federation of Malaya (<i>viz.</i> ,	Mauritius
Johore, Pahang, Negri Sembilan, Selangor, Perak, Kedah,	New Brunswick
Perlis, Kelantan, Trengganu,	New South Wales
Malacca and Penang)	New Zealand
	Newfoundland

²¹ Cf. *Warren's Trustees v. Ld. Adv.*, 1928 S. C. 806; S. L. T. 522.

²² But if the second death is that of a reversioner and payment of duty was deferred under s. 7 (6) of the F. A., 1894, no allowance is given if the property is sold before the interest falls into possession.

²³ *Viz.*, any part of His Majesty's Dominions exclusive of Great Britain and Northern Ireland.

²⁴ Under s. 20 (3) and (4) and under the Foreign Jurisdiction Acts.

Nigeria	Singapore
Northern Rhodesia	South Australia
Nova Scotia	Southern Rhodesia
Nyasaland Protectorate	Straits Settlements
Papua	Swaziland
Quebec	Tanganyika
St. Helena	Tasmania
St. Lucia	Trinidad and Tobago
St. Vincent	Uganda Protectorate
Sarawak	Victoria
Saskatchewan	Western Australia
Sierra Leone	Zanzibar ²⁵

The allowance extends only to the duty paid on the property chargeable with British E.D. and is not given in respect of duty on income accrued since the death or interest on the duty. It applies only to deaths after the date mentioned in the relevant Order in Council. Payments in non-British currency are converted at the rate of exchange on the date of payment. To gain this allowance an official certificate of payment of the duty in the British possession should be produced.

Duty paid to a Consular Court in respect of property within the jurisdiction of that Court and chargeable with British E.D. is by concession given the benefit of this section and repaid (up to the amount of the British E.D.) on production of the original numbered duty certificate.

(b) *As between Great Britain and "Ireland" and Northern Ireland.*—By s. 28 of the Government of Ireland Act, 1920, any E.D. paid in Northern Ireland in respect of property situate there is deductible against the E.D. payable in Great Britain in respect of the same property on the same death. Similar provision is made as to property in Eire by the Irish Free State (Consequential Provisions) Act, 1922, s. 5 (1), (2) and Relief in respect of Double Taxation [Irish Free State] Declaration, 1923. Both provisions are reciprocal. The question whether property is to be treated as situate in Great Britain or Ireland is decided, as regards Northern Ireland, by the Joint Exchequer Board, failing agreement, and as regards Eire according to the laws in force in England ²⁶ and Ireland on December 6, 1922.

²⁵ There are a few other British possessions as to which the former application of this section has been withdrawn.

²⁶ It should be noted that these provisions exclude the law of Scotland,

(c) *As between Great Britain and other countries.*—By s. 54 of the F. (No. 2) A., 1945, it may be declared by Order in Council that relief shall be granted from British E.D. and any duty of a similar character imposed by the Government of any territory outside the United Kingdom; and in such event ss. 7 (4) and 20 of the F. A., 1894²⁷ shall not apply and no allowance which would otherwise be given by s. 20 of that Act²⁸ shall be given.

(i) *United States of America.* The Double Taxation Relief (Estate Duty) (U.S.A.) Order, 1946 (S. R. & O., 1946, No. 1851) made under this section gave effect to a Convention with the United States of America providing for mutual relief from British E.D. and the American Federal estate tax.

Article III thereof provided (1) that for this purpose the question whether a decedent is domiciled in either country should be determined by the law of that country (this may result in a “double domicile” being attributed) and (b) that where he is domiciled in Great Britain or the U.S.A. the situs of certain assets should be determined as therein stated (that of *other* assets being determined according to the fiscal law of that of the two countries in which he is *not* domiciled).²⁹

By Article IV, where tax is imposed by one of these countries on the death of a person not domiciled in that country but in the other country, no account shall be taken, in determining the amount or rate of tax, of property situate outside the former country. But this does not apply in the U.S.A. in the case of a U.S. citizen domiciled in Great Britain, or in Great Britain in the case of property passing under a disposition governed by British law. (Thus, if the deceased was domiciled in Great Britain but was neither domiciled in the U.S.A. nor a U.S. citizen, the Federal estate tax is not payable on property outside the U.S.A. nor is such property taken into account in calculating such tax on property in the U.S.A.: and if the

even if the property in question is a Scottish asset. Thus a Scottish document under seal, if situate in Eire (or Northern Ireland by concession) at the death, is treated as an Eire or Northern Irish asset for all purposes (see below, pp. 155-6).

²⁷ See below, p. 119.

²⁸ See above, p. 85.

²⁹ See below, p. 376. “Debts” in paragraph (c) of the code includes government and municipal stocks, mortgage debts, debentures, stocks of public boards and bank accounts.

deceased was domiciled in the U.S.A. but not in Great Britain no account is taken for purposes of British duty of property outside Great Britain unless it is governed by a British disposition).

By Article V, where one of these countries imposes tax by reason of a decedent's being domiciled in its territory or being its national, it shall allow against so much of its tax attributable to property situate in the other country a credit (not exceeding the tax so attributable) equal to so much of the tax imposed by such other country as is attributable to such property. Where *each* country imposes tax by reason (only) of a decedent's being domiciled in such country, each country shall allow against so much of its tax attributable to property situate either (a) in both countries or (b) in neither country a credit which bears the same proportion to its own tax so attributable or the other country's tax so attributable (whichever is the less) as such tax bears to the sum of both countries' tax thereon. In effect, where under this Convention each country claims that the deceased is domiciled in its territory they will, in the cases specified, between them give a total credit equal to the lower of the two taxes attributable to the property. Thus, if the asset which by Article III is deemed to be situate in both countries is valued at the same figure for duty purposes and the British and American duties are chargeable at, say 10 per cent. and 4 per cent. respectively, then 10/14ths of the American duty is allowed against British duty and 4/14ths against the American, so that the U.S.A. charges only 10/14ths of its duty. In practice, this Article is applied where (as in the case of settled property) British E.D. is payable not because the deceased is domiciled in Great Britain but because the trust is governed by British law. The tax attributable to any property for the purpose of this Article is the net amount after deducting all allowances other than relief under this Convention.

By Article VI any claim for a credit or refund of tax under this Convention must be made within six years of the death of the deceased or of the date when a reversionary interest falls into possession; and any refund is made without interest.

By Article IX this Convention is to apply to Northern Ireland if implemented by Northern Irish legislation, which has been done by the Northern Irish F. A. (No. 1), 1946.

By Article X this Convention applies to all deaths on or after ratification, *viz.*, July 25, 1946, and, where the accountable parties so elect, to any earlier death after December 31, 1944.

By Article XI this Convention remains in force for three years and thereafter until either contracting party terminates it.

(ii) *Canada.* The Double Taxation Relief (Estate Duty) (Canada) Order, 1946 (S. R. & O., 1946, No. 1884) gave similar relief as regards British E.D. and Canadian (federal) Succession Duty as to deaths on or after November 6, 1946, and, if the accountable parties so elect, after December 31, 1944.

Article III provided a situs code³⁰ determining the situation, for the purpose of imposition of duty and of relief, of certain forms of property, where the deceased was domiciled in Great Britain or Canada. The situation of other property is to be determined by the law of that of the two countries in which he was not domiciled. Article IV is in similar terms to Article IV of the British-American Convention (paragraph (i) above), omitting the reference to U.S. citizens.

Article V provided that where either country imposes duty by reason of the deceased's domicile in that country (or in the case of Great Britain on property subject to a British disposition) it shall allow against its duty on property situate in the other of the two countries a credit (not exceeding such duty) equal to the duty imposed on such property by the other country. Where each country imposes duty on property deemed by Article III to be situate in neither country, the two countries between them give a total credit equal to the lower of their two duties on such property, apportioning the credit as under Article V of the British-American Convention. Articles VI and IX are similar to those thus numbered of the same Convention.

(iii) *South Africa.* The Double Taxation Relief (Estate Duty) (South Africa) Order, 1947 (S. R. & O. 1947, No. 314) gave similar relief as regards British E.D. and Estate Duty imposed by the Union of South Africa (but not by its constituent states) as to deaths on or after February 13, 1947.

Article III provided that where a person was at his death domiciled in Great Britain or ordinarily resident in the Union

³⁰ See below, p. 381.

(as determined by the laws of the respective countries) the situation of certain forms of property forming part of his estate should be determined by the situs code therein³¹ and that the Union might impose duty on any property situate under the code in the Union, but not elsewhere unless the deceased was ordinarily resident in the Union. But this provision has no application where duty would (apart from it) be imposed by one only of the two countries.

Article IV provided that where British E.D. is imposed on the death of a person not domiciled in Great Britain but ordinarily resident in the Union, or Union E.D. by the Union on the death of one not so resident but domiciled in Great Britain, no account should be taken in determining amount and rate of duty of property deemed by the situs code to be outside the country imposing duty (but this does not apply to British E.D. on property subject to a British trust).

Article V (1) provided that where each of the two countries imposed duty on property on the death of a person of British domicile but not ordinarily resident in the Union, or so resident but not domiciled in Great Britain, then the country of domicile or residence as the case may be should allow against its duty on such property a credit (not exceeding such duty) equal to the duty imposed thereon by the other of the two countries. Article V (2) provided that where each of the two countries charged duty on the death of a person both domiciled in Great Britain and ordinarily resident in the Union, then (a) as to property deemed by the situs code to be situate in one of the two countries, the other of such countries should allow against its duty on such property (but not beyond the amount of such duty) the duty imposed thereon by the first-mentioned country; and (b) as to all other property (*i.e.*, so situated in both or neither of the two countries) the two countries should between them give a credit equal to the lower of their two duties on the property, apportioned as under Article V of the British-American Convention. Articles VI and IX are similar to those thus numbered in that Convention.

(iv) *Netherlands*. The Double Taxation Relief (Estate Duty) (Netherlands) Order, 1950 (S. R. & O. 1950, No. 1197),

³¹ See below, p. 386.

made under the more limited powers conferred by s. 77 of the F. A., 1948, gave relief as regards British E.D. and the Netherlands Succession Duty as to deaths on or after July 1, 1948.

Article III provided that the domicile of a deceased person should for this purpose be determined according to the law of the country in which domicile is claimed. It also supplied a situs code for determining the situation of certain forms of property of a person domiciled in either Great Britain or the Netherlands; and provided that the situation of property not dealt with in this code should be determined by the law of that one of the two countries in which the deceased was *not* domiciled; Articles IV, V and VII are respectively similar in most respects with Articles IV, VI, and IX of the British-American Agreement.³²

³² The necessary Northern Irish legislation for Article VII is contained in the F. A. (N.I.), 1948, s. 2.

CHAPTER III

RATES OF DUTY

E.D. is payable at rates varying from 1 per cent. to 80 per cent., the rate in any particular case being determined by the total value of all the property passing on the death, with certain exceptions. S. 4 of the F. A., 1894, provided that all property liable to E.D.¹ on a given death should be aggregated to form one estate, on which the duty should be levied at the rate appropriate thereto. S. 7 (10) of that Act provided that property should not be aggregated more than once on the same death. It is immaterial that the separate items of property pass under different titles or to different beneficiaries.

The rates of E.D. have been progressively increased since 1894, and the old rates are still relevant for early deaths and where reversions have been sold or mortgaged while such rates were in operation. It should be noted that property passing on deaths between August 2, 1894, and April 8, 1900, under a disposition not made by the deceased, immediately to a person other than his or her spouse, ancestor or descendant, formed an estate by itself.² Settled property passing on deaths between April 9, 1900, and April 18, 1907, under a disposition made by a person dying before August 2, 1894, and liable to E.D. had the disponent died after the latter date, was aggregable but only to the extent of raising the rate of E.D. on such property and on any other property $\frac{1}{2}$ per cent. in excess of the rate which would have been payable had such settled property constituted an estate by itself.³ In the case of deaths between April 19, 1907, and July 28, 1927, such settled property formed an estate by itself.⁴

¹ This does not include property the duty on which has been commuted before the death (*Att.-Gen. v. Howe (Earl)* (1925), 133 L. T. 801, C. A.), but does include property the duty on which has been remitted, or is covered by an allowance, or is irrecoverable. Objects of national, etc., interest (see above, p. 78) and timber (see below, p. 114) are excluded from aggregation and on sale are liable at the rate appropriate to the rest of the "estate". The first £5,000 in value of property relieved by reason of death in war (see below, p. 167) is ignored for aggregation.

² F. A., 1894, s. 4.

³ F. A., 1900, s. 12 (2).

⁴ F. A., 1907, s. 16. By s. 51 of the F. A., 1927, all such property is fully aggregable.

Provisions by the deceased, liable to E.D. under s. 2 (1) (d) of the F. A., 1894, as amended by s. 30 of the F. A., 1939, are aggregable, unless a claim on the same property would have arisen under s. 2 (1) (d) alone without aggregation.⁵

The rates of E.D. now in force, are as specified in s. 28 (1) and Schedule VII of the F. A., 1949 (reproduced at p. 348 below).

By s. 13 (1) of the F. A., 1914, the amount of E.D. in respect of each estate (*i.e.*, the whole aggregated estate or each "estate by itself") is not to exceed the highest amount which would have been payable at the next lower rate plus the amount by which the value of the estate exceeds the value on which the highest amount of duty would be payable at such lower rate. This provision obviates the hardship previously existing where the value of an estate just exceeded the amount at which one rate ceased to be, and another became, operative: *e.g.*, estates of £2,000 to £3,000 pay E.D. at 1 per cent., those of £3,000 to £5,000 at 2 per cent., but an estate of £3,012 pays not 2 per cent. (*viz.*, £60 4s. 9d.), but 1 per cent. on £3,000 plus £12 (*viz.*, £42). If the aggregated estate comprises several items passing under different titles the total duty calculated as above is apportioned rateably between them.⁶

The following classes of property are exempted from aggregation and the rate of E.D. thereon is ascertained according to the value of each item of such property considered as an "estate by itself":—

(1) *Property "in which the deceased never had an interest"* is non-aggregable by virtue of the proviso to s. 4 of the F. A., 1894. Property settled on A during the life of B (the deceased) is an example, but if the deceased had an interest, however remote or contingent, at any time,⁷ the property is aggregable. Policies on the deceased's life effected by him under the Married Women's Property Acts are non-aggregable if he had no interest, even contingent, *e.g.*, if the wife died first, in the policy moneys: this is a question of fact in each case, in deciding which the

⁵ F. A., 1939, s. 30 (2).

⁶ For the purpose of s. 13 (1) the value of objects accorded exemption until sale as of national, etc., interest (see above, p. 73) or of timber (see below, p. 114) is excluded. On sale the proceeds are taxable at the higher rate: the full amount of the proceeds is not claimed as in the ordinary case of an accretion to a s. 13 (1) estate (where the additional duty necessarily equals the value of the accretion).

⁷ *Att.-Gen. v. Pearson*, [1924] 2 K. B. 375.

decision in *Cousins v. Sun Life Assurance Society*⁸ should be borne in mind. Even if he had no interest under the terms of the policy the moneys will still be aggregable if the wife dies first leaving her estate, including the policy, to the deceased for his life, unless her will excludes in the rule in *Re Chesterfield's (Earl) Trusts*.⁹ As to policies generally, if the deceased effected a policy in his name and then settled or assigned it he had an interest in the policy moneys, though the latter were not payable until his death and even if the claim for E.D. is limited to a life-interest under s. 2 (1) (d).¹⁰ In many cases of provisions by the deceased taxable under s. 2 (1) (d) he will clearly have had no interest in the benefit arising on his death; but an annuity payable on his death and specifically charged on profits or on property in which he had an interest is aggregable.¹¹ If the claim on the annuity arises under s. 1 (i.e., where a single annuity, or a share thereof, passes on the deceased's death from him to another) the property is aggregable whether the annuity is or is not so charged. As regards benefits arising under superannuation schemes, etc., non-aggregation is conceded where the benefit is in fact payable to a dependant, even if the deceased's estate might have been entitled had there been no such dependant; and also if it is payable to one of several beneficiaries at the option of the trustees, etc., of the scheme. Accumulations of income of property settled by the deceased are aggregable, notwithstanding that they arise after he has disposed of all interest in the settled fund, for his original ownership of the property included all its future income and had all the beneficiaries under the settlement disclaimed their interests there would have been a resulting trust to him.¹² It should be noted that the deceased had an interest in all property of which he was competent to dispose, even though he was incapable of personal enjoyment of it in his lifetime.¹³

(2) *Small Estates*.—By the combined effect of s. 16 (3) of

⁸ [1933] Ch. 126, C. A.

⁹ (1883), 24 Ch. D. 643.

¹⁰ *Att.-Gen. v. Pearson*, [1924] 2 K. B. 375; *Tennant v. Ld. Adv.*, [1939] A. C. 207; *Westminster Bank, Ltd. v. Att.-Gen.*, [1939] Ch. 610, C. A.

¹¹ *Liberton & Craigmillar Estates v. Ld. Adv.*, 1942 S. C. 402; S. L. T. 257.

¹² *Att.-Gen. v. Dickinson*, [1937] 2 K. B. 574; 2 All E. R. 485; *Re Hodson's Settlement*, *Brookes v. Att.-Gen.*, [1939] Ch. 343, C. A.; cf. *Re Thorley*, *Thorley v. Massam*, [1891] 2 Ch. 613 (a case on L.D.).

¹³ *Att.-Gen. v. Quirley* (1929), 98 L. J. K. B. 315.

the F. A., 1894, Part III of Schedule X to the F. A., 1946, and s. 50 (1) (a) of the F. A., 1947, where the net value of the property (excluding that settled otherwise than by the deceased's will) in respect of which E.D. would be payable on a particular death (if there were no exemption on account of value) does not exceed £2,000,¹⁴ such property is to form an estate by itself instead of being aggregated with other property.

Accordingly, if the deceased's own free estate does not exceed £2,000 in net value and the only other property passing on his death is property settled by another will or by settlement, the free estate is exempt from E.D., no matter what the value of the other settled property. Any other *unsettled* property must, however, be valued with the net free estate to see whether the £2,000 is exceeded for the purpose of s. 16 (3). Settled property has already been defined (above, p. 57). The following properties are "settled otherwise than by the will of the deceased" for this purpose:—

- (a) property settled by the will of a person other than the deceased, or by any other disposition (including business assets or a share thereof passing under a partnership deed to a surviving partner without payment, also property over which the deceased had but did not exercise a general power of appointment and which does not belong to him in default of appointment, even if the deceased had an ultimate reversion therein on the death of a subsequent life-tenant);
- (b) property in which the deceased had an interest by curtesy or dower (or in Scotland by courtesy or terce) under the intestacy of his or her spouse¹⁵;
- (c) a joint annuity covenanted to be paid or purchased by a third party, or purchased by the deceased and another, where the deceased was the first annuitant to die;
- (d) property the subject of a settlement with a reservation under s. 38 (2) (c) of the Customs and I. R. Act, 1881, and gifts not to the entire exclusion of the deceased where a rentcharge is reserved to the deceased¹⁶;

¹⁴ Where the death occurred before April 16, 1947, this limit was £1,000.

¹⁵ F. A., 1894, ss. 22 (3) and 23 (19).

¹⁶ Settled Land Act, 1925, s. 1.

- (e) an investment in the joint names of the deceased and another, where there is an express trust (parol or otherwise) to pay the income to the deceased;
- (f) an annuity charged on real estate, or leaseholds, or on business assets or profits, even if the latter is the subject of absolute ownership.

The following properties are not settled and must be included with the free estate to ascertain whether the total value of all such properties exceeds £2,000 :—

- (a) *donationes mortis causa*;
- (b) gifts *inter vivos* to an absolute donee (including gifts not to the entire exclusion of the deceased, other than as at (d), above);
- (c) policies on the deceased's life kept up for an absolute donee, and joint-life policies;
- (d) property the subject of a nomination by the deceased taking effect on his death;
- (e) provisions by the deceased within the meaning of s. 2 (1) (d) of the F. A., 1894, in favour of an absolute beneficiary, including annuities arising on his death (except as at (f), above);
- (f) joint deposits in the Post Office Savings Bank or in a Trustee Savings Bank are, by the relevant regulations, to be treated as passing under the joint holder's will or intestacy¹⁷;
- (g) Property taken out of settlement during the deceased life-tenant's life but liable to E.D. on his death under s. 48 of the F. A., 1940.

In the following cases it is doubtful whether the property is correctly described as settled or not, and the accountable parties are allowed to choose whichever course is the most favourable to them :—

- (a) interests in expectancy¹⁸;
- (b) property held in joint tenancy, however created, and whether the whole or a part only is liable to E.D. (except

¹⁷ S. R. & O. 1921, No. 1532, 88 (1), and 1929, No. 1048, 29 (1).

¹⁸ See definition above, p. 74. For this purpose the interest in expectancy is valued as at the reversioner's death and any advantage so gained is not lost even if the value when it falls into possession causes the limit of relief to be exceeded.

- as at (e) above in description of settled property), including a gift of property to persons as joint tenants ;
- (c) entailed property (unless disposed of by the deceased's will under the Law of Property Act, 1925, s. 176) ;
- (d) a policy on the deceased's life settled by his marriage settlement, where the moneys pass on his death to his issue directly.

In exercising the option to treat property as settled or not settled all interests under each of the four headings immediately above must be treated alike, but interests under separate headings may be treated differently. Thus if the deceased had two interests in expectancy, both must be treated as settled or both as unsettled ; but an interest in expectancy may be treated as settled and a share in joint property as unsettled.

Property over which the deceased had a general power of appointment, if exercised by his will, or whether exercised or not if the property belongs to him in default of appointment, cannot be treated as settled otherwise than by his will.¹⁹

In ascertaining whether the £2,000 limit is exceeded the value of timber is ignored and interests in expectancy are valued as at the deceased's own death, notwithstanding that the value of the timber when sold or of the interest in expectancy when in possession may bring the value of the s. 16 estate over £2,000. Unsettled property within the above definitions is included for the purpose of ascertaining whether the £2,000 is exceeded notwithstanding that it may itself be non-aggregable under heading (1) above.

(8) *Agricultural property* was excluded from the increased rates of E.D. imposed by the F. A., 1925, to the extent of the "agricultural value" thereof, which was thus liable at the rates imposed by the F. A., 1919, s. 23, on all deaths from July 31, 1919, to July 29, 1949 inclusive. For deaths after the latter date s. 28 (1) of the F. A., 1949, provided that the scale imposed by that Act, with a reduction of 45 per cent. in each of the rates, should apply to the "agricultural value".

"Agricultural property" is defined by s. 22 (1) (g) of the F. A., 1894, and "agricultural value" by s. 23 (2) of the F. A., 1925. The amount, if any, by which the principal value of the

¹⁹ *Re Magan* (noted at [1922] 2 Ir. R. 204).

agricultural property exceeds the "agricultural value" (called the "excess principal value") is liable at the full rate. For ascertaining the rate of duty on this and on any other aggregable property the agricultural property is taken at its full market value, not at the "agricultural value", and timber is ignored. Thus if the property liable to E.D. on a death on January 1, 1950, comprised personalty worth £22,000 and agricultural property whose market value was £10,000 but its "agricultural value" £7,000 only, and there was growing timber worth £500, the personalty (£22,000) and the "excess principal value" (£3,000) are taxable at 21 per cent. (the rate appropriate to an estate of £32,000) and the "agricultural value" (£7,000) at 55 per cent. of 21 per cent. (=11.55 per cent.): the timber is ignored but on sale its proceeds are liable at 21 per cent.

Any deductible incumbrance on the property is apportionable between the "agricultural value" and the "excess principal value".²⁰

This relief is given even if the property is subject to an unexercised trust for sale, whether on the death of a life-tenant or of an absolute owner in possession or reversion.

²⁰ F. A., 1925, s. 23 (3).

CHAPTER IV

VALUATION OF PROPERTY, ASSESSMENT AND
PAYMENT OF DUTY1. *Valuation*

S. 1 of the F. A., 1894, in imposing E.D., did so on the “principal value” of the property passing¹ on death, irrespective of the interests therein of the deceased or of the beneficiaries entitled on his death. “Principal value” is defined in s. 7 (5) of the Act as the price which in the opinion of the Commissioners the property would fetch on a sale at the death in the open market. In arriving at their opinion the Commissioners are not to reduce their estimate merely because the whole property is placed on the market at once, but they must allow for depreciation actually caused by the death.² Subject as above, they may ascertain the value by such means as they choose and have the right of inspection.³

“Open market” has been held to mean one from which no one is excluded,⁴ including, it would seem, any purchaser who may have special reasons for paying a better price than others. “Price” in s. 7 (5) means the *gross* price, since it is the sale price, not the cost price—and the price, not the proceeds—which has to be taken; expenses are only deductible in the case of a share of an unadministered estate or of a trust estate which has to be sold. A sale after the death is not necessarily a criterion of the value at the death⁵; it must be shown that the circumstances are the same at both dates, but normally a sale at arm’s length shortly after the death will be accepted by the Revenue. An estimate of the value by the deceased in his will, or an option

¹ Including property deemed by s. 2 (1) of that Act, s. 43 of the F. A., 1940, *tc.*, to be included in property passing on the death (see above, p. 15ff.), except where the claim arises under s. 2 (1) (d) (see above, p. 39), or where the property passing is itself only a limited interest (see above, p. 13).

² F. (1909-10) A., 1910, s. 60 (2).

³ F. A., 1894, s. 7 (8).

⁴ *Per* Slessor and Romer, L.JJ., in *Re Crossman*, [1935] 1 K. B. 26, C. A., *tt* pp. 52 and 64.

⁵ See *I. R. Commrs. v. Marr’s Trustees*, 1906, 44 S. L. R. 647; *Ellesmere Earl*) *v. I. R. Commrs.*, [1918] 2 K. B. 735.

to purchase at a certain figure given thereby,⁶ is irrelevant. The open market value posited by s. 7 (5) may contain a hypothetical element.⁷ It has been held to mean the best price which can be reasonably obtained⁸ and it is immaterial that the deceased or the beneficiary entitled on his death is personally unable to sell or is restricted in selling.⁹ It is even immaterial that there is in fact no "open market" for the property in question: s. 7 (5) requires that one must be assumed.¹⁰ It should be noted that gifts *inter vivos* must be valued as at the death of the donor under s. 7 (5).

Stocks and shares should be valued according to the quotation in the official daily list of the London Stock Exchange; if quoted only on a local Stock Exchange a copy of the official list for such exchange should be forwarded. If the quotation shows a margin, *e.g.*, 98-100, the price should be taken at one-quarter up from the lower price, *i.e.*, 98½. Where bargains are shown, they may be adopted for the valuation; if there is a margin a figure midway between the highest and lowest is adopted. Where the death occurred on a day when the Stock Exchange was shut, the quotation for the nearest business day is adopted. If the security is quoted *ex dividend* at the death, the dividend (less income tax at the standard rate, so far as not recoverable by the estate) should be included in addition. In accounting for property of which the deceased was life-tenant, any sum due to his estate for income accrued or apportioned to his death and included in the quoted price should be excluded from the E.D. account and included in his own estate. Where the settled investments are quoted *cum dividend* the proportion of the dividend due to his estate should be deducted in the account (less income tax, unless the dividend is payable free thereof); where quoted *ex dividend*, the dividend, which is not included in the quoted price, should be added to the account before the proportion due to the deceased's estate is deducted as above. In the case of dividends payable as of right (*e.g.*, on Government stocks, debentures, etc.), the proportion due to the life-tenant's estate is calculated according to the portion he lived through of the period for which

⁶ *Ld. Adv. v. Wood's Trustees*, 1910, 1 S. L. T. 186.

⁷ *Glass v. I. R. Commrs.*, 1915, 52 S. L. R. at p. 417.

⁸ *Ellesmere (Earl) v. I. R. Commrs.*, [1918] 2 K. B. 735.

⁹ *Re Aschrott*, [1927] 1 Ch. 313.

¹⁰ *Att.-Gen. (Ir.) v. Jameson*, [1904] 2 Ir. R. 644.

and at the end of which it is paid; in the case of dividends declared and paid out of profits, according to the portion he lived through of the period in which it was earned and for which it was declared. Where there is no official quotation, the valuation should be supported by quotations from financial journals, or by a certificate from brokers or from the company's secretary or accountants, stating the dates, prices and amounts of any recent sales at arm's length, the last three years' dividends, the amounts carried forward in those years and particulars of any bonuses declared. Balance sheets, which a company is bound to supply to shareholders on demand, and profit and loss accounts of the company may also be required. Where executors are bound by the articles of association to sell or offer the deceased's holding at a certain price or a "fair value", it is presumed (unless s. 55 of the F. A., 1940, applies—see next paragraph), since s. 7 (5) posits a sale in the open market, that the hypothetical buyer has himself become a shareholder and will after the hypothetical sale hold the shares subject to the terms of the articles of association, *i.e.*, to the right of pre-emption against his own holding, but with the corresponding right of pre-emption against the other shares in the company and to any right to transfer his holding to his family or the other shareholders which the articles may give.¹¹

The open-market value of an interest in a company may be influenced by the extent of the holding, in that a controlling interest will normally be worth more per share than a minority holding. The right to control the policy and destiny of a prosperous company is a valuable one; further, where a shareholder can bring about realisation of a company's assets and distribution of the proceeds, his interest cannot be worth less than the amount he could obtain by this course. These principles follow from the open-market basis of valuation laid down in s. 7 (5) of the F. A., 1894, and are not dependent on any later special legislation.

The interests of the Revenue have, however, been specially safeguarded by statutory provisions that in certain cases the valuation of a deceased person's interest in a company shall not be approached from the angle of an open-market value of his

¹¹ *I. R. Commrs. v. Crossman*; *I. R. Commrs. v. Mann*, [1937] A. C. 26, overruling the Court of Appeal, [1935] 1 K. B. 26, and affirming the principle laid down in *Att.-Gen. (Ir.) v. Jameson*, [1905] 2 Ir. R. 218, C. A., and *Salvesen's Trustees v. I. R. Commrs.*, 1930 S. L. T. 387.

shares or debentures as such, but shall be estimated as equivalent to a due proportion of the open-market value of the company's assets. The scope of these provisions extends to much wider classes of cases than those where there is *de facto* controlling interest; and, while clearly aimed at certain types of evasion, are mandatory and determine the basis of valuation in many cases where there has been no attempted evasion. There is rarely any injustice, however, in the adoption of an assets basis of valuation where the deceased's interest was relatively substantial.

It should be noted that while in these cases a special basis of valuation is laid down, the claim for duty is still on the shares or debentures; and that assets of the company have to be taken into account in the computation even if they would themselves have been exempt from E.D. had they passed as such.

Assets basis of valuation under F. A., 1940, s. 55 :—

The assets basis of valuation is, in certain cases, governed by s. 55 of the F. A., 1940,¹² which applies to deaths on or after June 27, 1940. In the case of deaths on or after April 10, 1946, the three-year period specified in s. 55 is amended to five years.¹³

It will be seen from s. 55 (1) that where shares or debentures of a company to which the section applies¹⁴ pass on the death¹⁵ the special basis of valuation applies in any one of three sets of circumstances, which are substantially as follows :—

- (a) where the deceased had control of the company at any time during the five years ending with his death;
- (b) where more than half the dividends on shares and interest on debentures in respect of or during certain periods constituted benefits to the deceased;
- (c) where the deceased had at any time during the five years a beneficial interest in possession in one-half or more of the nominal issued shares and debentures, and no one other person had at that time control of the company.

Paragraph (a) above relates to control, paragraph (b) to the deceased's share of dividends and interest, and paragraph (c) to his share of capital. These conditions will be considered in order.

¹² Replacing the F. A., 1930, s. 37 (see F. A., 1940, s. 55 (7)).

¹³ F. A., 1946, s. 47, and Eleventh Schedule.

¹⁴ F. A., 1940, s. 58 (1); F. A., 1946, s. 47, and Eleventh Schedule.

¹⁵ This covers shares, etc., deemed to be included in the property passing.

Section 55 (1) (a).—Where the deceased had control of the company at any time during the prescribed period.

This clearly covers all cases where, because of control inherent in the deceased's holding, he had *de facto* control; but s. 55 (3) extends the meaning of control considerably beyond this simple case. It is generally necessary in the first place to scrutinise the Articles of Association of the company to ascertain where voting control lies; and it will be observed from s. 55 (3) (a) that voting control on all questions is not necessary to bring a case within the scope of the Act: such control on any particular question affecting the company as a whole is enough.

A variety of factors may contribute to control. For instance, a person might have control by virtue of having half the votes appertaining to shares and also a casting vote as chairman of the company.

Control which a person had in a fiduciary capacity is disregarded.¹⁶ But where a person had votes as trustee (or first-named and therefore voting trustee) under a disposition made by himself,¹⁷ his capacity to exercise these votes is not regarded as fiduciary for the purpose of the Act.¹⁸ The control necessary to bring the case within the Act may be derived from the aggregation of votes attached to shares held under various titles; and it is not essential that there should be an E.D. claim on all the shares involved.

Once it is established that s. 55 applies to a company on a death, it applies to all the shares or debentures therein passing or deemed to pass,¹⁸ irrespective of the fact that some of the shares involved—*e.g.*, a gift *inter vivos*—may in themselves constitute a minority holding.

S. 55 (3) (b) deals with control in an executive capacity. The powers of a board of directors or of a governing director are not defined in the Act, but the lack of statutory definition seldom gives rise to any difficulty in practice.

It should be noted that paragraphs (a) and (b) of s. 55 (3) are alternative; and even if powers vested in the deceased satisfying the conditions of s. 55 (3) (b) could have been removed by

¹⁶ F. A., 1940, ss. 55 (5) and 58 (5).

¹⁷ Which would include a disposition made by himself and another jointly (s. 58 (4)).

¹⁸ Unless excluded by s. 55 (4).

the votes of other shareholders this would not prevent the operation of the section. It is quite possible for two persons to be separately in control of a company at one and the same time within the meaning of s. 55 (3). The deceased might have had the powers of a board by virtue of a casting vote as one of a board of two directors. S. 55 (3) (a) and (b) both apply where the deceased could have obtained the control or capacity referred to although he had not done so. Control in a fiduciary capacity is disregarded for s. 55 (3) (b) as for s. 55 (3) (a); and it might be argued (though doubtfully) that the normal powers of a director as such are fiduciary. In many cases, however, it will be found that the directorship has been conferred by a disposition made by the director himself,¹⁷ either as one of the founders of the company or otherwise, and the powers are therefore not fiduciary within the meaning of the Act.¹⁶

Section 55 (1) (b).—Where more than half the dividends on shares and interest on debentures in respect of or during certain prescribed periods constituted benefits to the deceased.

For the purpose of this paragraph “benefits” must be considered in conjunction with ss. 47 and 48.

The terms of this paragraph permit the Revenue to select any period falling wholly or partially within the five years ending with the death; and if the declared dividends in respect of that period (or for no particular period, if declared within the five years) and interest accrued due on debentures during the selected period represent in the aggregate, to the extent of more than one-half the total comparable dividends and interest of the company, benefits¹⁹ to the deceased, or would have been so regarded if he had made a transfer to the company, the section applies.

In considering this paragraph the wide definition of debentures in s. 59 must not be overlooked.

¹⁹ As defined in ss. 47 and 48.

Section 55 (1) (c).—Where the deceased had at any time during the five years a beneficial interest in possession in one-half or more of the nominal issued shares and debentures and no one other person had at that time control of the company.

“Beneficial interest in possession” is not confined to an absolute interest, but extends to property in which the deceased had a limited interest, such as a life-interest.²⁰ An interest in expectancy, however, not being in possession, is excluded. The expression “nominal amount” in this paragraph must be taken in its strict sense and distinguished from paid-up amount. The question of whether one other person had control must be determined by the test of control furnished by s. 55 (3). The definition of debenture is again of great importance.

S. 55 (4) prevents the application of s. 55 to the valuation of shares and debentures the subject of a recorded dealing on a recognised Stock Exchange in the United Kingdom, in the ordinary course of business during the year before the death.

Once it is established that a case falls within s. 55, it is necessary to ascertain the value of the company's total assets at the date of the deceased's death.²¹ The principal value of such assets is determined on the normal basis of valuation for E.D. purposes, *viz.*, at the open market value postulated by s. 7 (5) of the F. A., 1894.²² The Revenue is entitled to assume realisation of the assets in the manner calculated to produce the best possible price,²³ *i.e.*, as a single group, or in smaller groups, or piecemeal; as a going concern including goodwill, or as on a break-up. Liabilities deducted in arriving at the net assets are as set out in s. 50 (1),²⁴ except that for the purpose of s. 55 it is not essential that the liabilities should have been incurred for the purpose of the business wholly and exclusively.²⁵

The net value of the assets as computed at the date of death represents the total value of all the shares and debentures issued and outstanding²⁵; and while all shares or debentures of any

²⁰ S. 58 (3).

²¹ S. 55 (6).

²² S. 55 (2) (a).

²³ *Ellesmere (Earl) v. I. R. Commrs.* (1918), 119 L. T. 568.

²⁴ See above, p. 51.

²⁵ S. 55 (2) (b).

single class are taken to be of the same value²⁶ the necessity may arise for apportioning the net value of the assets between shares and debentures or different classes of either. Such apportionment proceeds on the basis of the rights attaching to the classes of capital involved.²⁷ This is taken to mean the rights enjoyed by a particular holding of shares in the hands of an individual. It should be especially noted that the rights are not confined to rights on liquidation. For purposes of apportionment it is assumed that a division of the assets is taking place between the various classes, each class acting to its financial advantage and bargaining for the best terms. It is clear that a result arrived at in this way may differ from the distribution on a winding-up. For instance, where complete control is vested in the ordinary shares, a holder of preference shares might in some circumstances be willing to accept less than he would be entitled to on liquidation, in order to get money out of a business that was unremunerative. Every case has to be considered on its merits.

The amount to be apportioned to one class may be determined by stock exchange dealings if there have been any satisfying the prescribed conditions.²⁸

In the case of furniture, stock-in-trade, farming stock and similar personal property a valuation, and where substantial duty is involved an inventory, may be required. Full particulars should be supplied as to the make, year and horse-power of motor cars. The gross amount of book debts should be shown and any deductions therefrom fully explained. If the deceased was a partner in a business, the articles of partnership should be forwarded, with a balance sheet signed by the surviving partners, but these need not be enclosed with the Inland Revenue Affidavit.

The share of a partner has been defined as "his proportion of the partnership assets after they have been all realised and converted into money and all the partnership debts and liabilities have been paid and discharged,"²⁹ and accordingly, where the deceased's share as such is dutiable, costs of realisation of the partnership assets by the surviving partners may be deducted.

²⁶ S. 55 (2) (b).

²⁷ S. 55 (2) (c).

²⁸ S. 55 (4).

²⁹ Lindley, Partnership, 11th ed., p. 427.

Where, under the articles, the surviving partners are entitled to purchase a deceased partner's share on a prescribed basis (*e.g.*, as shown in the last balance sheet before his death), and do so purchase it, the amount so paid will generally be the amount on which E.D. is payable in his estate, though in such cases any excess value of his share in the business may be dutiable under another heading. Where E.D. is payable under s. 2 (1) (d) of the F. A., 1894, in respect of an annuity arising on the deceased's death under a partnership deed, such claim may be covered in whole or part by the claim on the business, including goodwill (cf. above, pp. 37, 80).

The basis of valuation of goodwill, whether the deceased was a partner or a sole owner, should always be explained or its absence accounted for. Goodwill has been defined as "the whole advantage, whatever it may be, of the reputation and connection of the firm, which may have been built up by years of honest work or gained by lavish expenditure of money".³⁰ Goodwill is part of the assets of a partnership and in the absence of contrary agreement³¹ the representatives of a deceased partner are entitled to have it sold as part of the assets.³² If the articles provide that on the death of a partner the survivors shall take over the assets at a valuation, the goodwill must be valued on the same footing.³² In certain trades there is a customary method of valuing goodwill according to so many years' purchase of the net profits or otherwise, though goodwill is rather the expectation of future super-profits.

In the case of policies on the deceased's life the actual amount payable is normally the amount liable to duty, but a reasonable discount is allowed where the moneys are only payable after a period or compliance with certain formalities. If the policy is on the life of another person E.D. is payable on the market value at the deceased's death, which is not necessarily the surrender value. The deceased's interest in such a case is not an interest in expectancy for the purpose of s. 7 (6) of the F. A., 1894 (see next paragraph). Bonuses payable as of right are liable to duty.

³⁰ *Per* Lord Macnaghten in *Trego v. Hunt*, [1896] A. C. 7, at p. 24 (and cf. Lord Herschell, at p. 17).

³¹ As, *e.g.*, in *Hunter v. Dowling*, [1895] 2 Ch. 228.

³² *Re David and Matthews*, [1899] 1 Ch. 378; *Hill v. Fearis*, [1905] 1 Ch. 466.

E.D. on an interest in expectancy³³ may, by s. 7 (6) of the F. A., 1894, be paid, at the option of the accountable parties, either with the duty on the rest of the estate or when the interest falls into possession. If the option to defer payment is exercised the rate of E.D. on the rest of the estate³⁴ must be determined by valuing the interest as at the death of the reversioner, but the rate on the interest in expectancy by valuing it when it falls into possession (in each case adding in the value of the rest of the estate as previously ascertained).³⁵ As the value of the interest when it falls into possession will generally exceed its value at the reversioner's death, the rate of duty on that interest, if payment is deferred, may exceed that on the rest of the estate. Note that the E.D. on the reversion, even if payment is deferred, is still leviable in connection with the reversioner's death, with all its consequences, and in addition to any E.D. payable on the same property as passing on the life-tenant's death under the prior title.

The option need not be expressly exercised and if accountable parties purport to exercise it they may change their minds at any time before completion of administration of the estate in possession. Where the grant of representation was not obtained until after the interest in expectancy fell into possession, or if its existence was not known at the time of the grant, it may be valued as at the death of the reversioner, if so desired. If the duty on the interest in expectancy is not paid before completion of administration of the rest of the estate, or if the option has been definitely exercised, and it is later desired to pay duty on the interest before it falls in, the duty must be commuted,³⁶ even if the interest has been sold or the prior life-interest has been surrendered. Duty cannot be demanded merely because of such sale or surrender.³⁷

The value of the interest as an expectancy is its market price

³³ See definition above, p. 74.

³⁴ Including any other interests in expectancy, even if they have already fallen into possession.

³⁵ In terms s. 7 (6) deals only with time of payment and rate of duty, but in *Re Eyre*, [1907] 1 K. B. 331, it was held that if the option to defer payment is exercised E.D. is payable on the interest in expectancy valued at the date of its falling into possession: it was also stated that if the option is not exercised duty is payable on the reversionary value of the interest.

³⁶ See below, p. 128.

³⁷ Cf. *Re O'Connor's Estate*, [1931] Ir. R. 98.

at the reversioner's death. In practice it is often permissible to deduct the value of the outstanding life-interest from the present value of the property, but there is no authority for this. Regard should be taken of any contingencies affecting the interest. Where the interest is liable to be defeated entirely by the exercise of an overriding power of appointment (general or limited), or the revocation of a revocable appointment already made, it is treated as valueless, unless circumstances, *e.g.*, incapacity, render an exercise of the power improbable. But the property is treated for all consequential purposes (*e.g.*, exemption from E., L. or S.D.) as having borne E.D., provided that E.D. has been paid on the rest of the estate.

Where the option to defer payment is exercised and s. 13 (1) of the F. A., 1914,³⁸ applies to the total estate (*i.e.*, estate in possession plus such interest, valued as when it falls in), the total E.D. under s. 13 (1) on that total estate is found and the proportion of this attributable to the interest at its value in possession is the amount of E.D. chargeable on such interest. If there are several interests in expectancy the E.D. on each when it falls in is calculated as the proportion of the E.D. under s. 13 (1) (on the estate in possession, the interest at its value when fallen in, and the other interests in expectancy whether yet in possession or not at their value as at the reversioner's death) attributable to the interest fallen in at its value in possession.

An accretion under s. 33 of the Wills Act, 1837,³⁹ must be valued as at the date of the ancestor's death, unless it is subject to an outstanding life-interest in some other person, when it is treated as an ordinary interest in expectancy. The value of the accretion must be added to that of the dead beneficiary's estate in possession at his death.

The method of valuing the "slice" of trust property required to produce, or subject to, an annuity has been briefly considered above.⁴⁰ In *Ld. Adv. v. Fotheringham*⁴¹ it was stated that the income of the property for the purpose of s. 7 (7) (b) of the F. A., 1894, means the net income "after allowing for public

³⁸ See above, p. 93.

³⁹ See above, p. 16.

⁴⁰ See p. 21.

⁴¹ 1924 S. L. T. 2; S. C. 52; see also *Barclays Bank, Ltd. v. Att.-Gen.*, [1945] 1 All E. R. 181.

burdens together with ordinary and necessary repairs". Incumbrances are not taken into account unless they are so large as to affect the annuity itself.^{41a} Where property is not yielding a normal income a notional income based on a percentage of the capital value according to the current yield of trustee securities is taken. As regards annuities free of income tax it should be noted that an agreement for any annual payment without deduction of tax is void.⁴² Such annuities can only be given (a) by will, (b) by voluntary settlement not creating contractual rights⁴³ and (c) where the annuity is directed to be such a sum as after deduction of tax will amount to £x. In all such cases the annuitant is not entitled to retain any repayment of tax on account of personal allowances or non-liability at the full rate, but must account to the trustees for any such repayment,⁴⁴ unless the gift is of such a sum as after deduction of tax at the standard or current rate will leave £x.⁴⁵ Except in the latter case the "slice" must be calculated with reference to the annuitant's effective tax, which may be done as follows: find the annuitant's total net income, including the annuity grossed for freedom from tax at the current standard rate and deduct earned income relief; then find the tax payable on this, having regard to all the annuitant's circumstances (*e.g.*, personal reliefs); take the proportion of such tax attributable to the annuity so calculated; this proportion plus the amount of the tax-free annuity as stated in the will or other document is the gross amount of the annuity for calculation of the "slice". Where s. 25 of the F. A., 1941 (as amended by s. 20 of the F. (No. 2) A., 1945) applies, the following method may be adopted:—(a) the appropriate fraction of the annuity as stated in the will, etc., should be grossed up at current standard rate; (b) then find the repayment of tax which would have been due in 1938–9 having regard to all the annuitant's circumstances and to the rate of tax and reliefs applicable in 1938–9 (the stated amount of the annuity being grossed at the 1938–9 rate); (c) take the appropriate fraction of

^{41a} *Ld. Adv. v. Henderson's Trustees*, 1905, 42 S. L. R. 720.

⁴² Income Tax Act, 1918, r. 23 (2) of All Schedules Rules.

⁴³ *Re Goodson's Settlement*, [1943] 1 Ch. 101; 1 All E. R. 201.

⁴⁴ *Re Pettit, Le Fevre v. Pettit*, [1922] 2 Ch. 765; confirmed in *I. R. Commrs. v. Cook*, [1946] A. C. 1. The annuitant can be compelled to sign an application claiming relief (*Re Kingcome, Hickley v. Kingcome*, [1926] Ch. 566).

⁴⁵ *Re Jones, Jones v. Jones*, [1933] Ch. 842. And see ss. 25, 26 and 27 of the F. A., 1941, as amended by s. 20 of the F. (No. 2) A., 1945.

this repayment and deduct it from the grossed fraction of the annuity first found (as at (a), above); the difference is the gross amount of the annuity for calculating the "slice".

S. 47 of the F. A., 1938, provides that where the deceased had an interest limited to cease on his death in the residue of an estate, the administration of which was not completed at his death, such interest shall be deemed (s. 47 (2)) to be an interest in the estate as for the time being held by the personal representatives subject to outstanding charges⁴⁶ and to any adjustments between capital and income, and (s. 47 (3)) shall be deemed to have become an interest in possession as from the date on which the income would have been attributable to such interest if the residue had been ascertained immediately after the death of the testator.

The object of these provisions is to prevent the E.D. position being prejudiced by the decision in *Corbett v. I.R. Commrs.*⁴⁷ that until the residue is ascertained no beneficiary has any title to that residue or to the income of its investments. They provide, in effect, that where an interest in unadministered residue is limited to cease on the death of the deceased such interest, for E.D. purposes, shall be deemed to be an interest in the net assets then constituting the prospective ultimate residue. If part of the residue has been ascertained, the interest is to be an interest in that part and in the unascertained part. S. 47 (3) prevents any application of s. 5 (3) of the F. A., 1894.⁴⁸

Where an annuity has to be valued for E.D. purposes⁴⁹ it is permissible to use the values as given in the Tables to the Succession Duty Act, which are on a 4 per cent. basis. Where the annuity ceases on remarriage or any other contingency it should be discounted.⁵⁰ The same method may be adopted where an annuity forms the subject of a deduction, e.g., where

⁴⁶ As defined by s. 35 (6) of the Act, *viz.*, funeral, testamentary and administration expenses, debts, general and demonstrative legacies (including the £1,000 payable under s. 46 of the Administration of Estates Act, 1925, and a surviving spouse's £500 under the Intestate Husband's Estate (Scotland) Act, 1911, and the Law Reform (Miscellaneous Provisions) (Scotland) Act, 1940), annuities, and any other liabilities of the personal representatives as such.

⁴⁷ [1938] 1 K. B. 567, C. A.

⁴⁸ See above, p. 53.

⁴⁹ *E.g.*, as at pp. 14 and 39 above.

⁵⁰ The Estate Duty Office employs a table for this purpose and will supply particulars on application.

a charge on the deceased's free estate and created either by his predecessor in title or by the deceased himself for full consideration in money's worth.

Real and leasehold property should be included in the Inland Revenue Affidavit or E.D. Account at an estimated valuation, which is then submitted (in the case of an account, before assessment of duty) by the Estate Duty Office to the Valuation Office (Inland Revenue) for an expression of opinion. If the accounting parties' valuation is not accepted by the District Valuer, the latter's valuation is notified either by him or by the Estate Duty Office to the parties, and on agreement an assessment of any additional duty (where the duty has already been paid on the parties' valuation) is issued on a form prepared in the Office. If the official valuation involves a return of duty the parties are notified and on receipt of their instructions as to who is to receive the repayment the duty is repaid by means of an assessment made in the Office. Where the official valuation is not agreed by the parties an official assessment of the further duty may be issued. Appeals against the official valuation must be made in England and Wales⁵¹ to the Registrar of the Lands Tribunal, 24, Abingdon Street, London, S.W.1, in duplicate on the appropriate Form (obtainable from the Registrar or the Estate Duty Office) within 30 days of service of notice of the official determination of value.⁵² The accounting parties may obtain the provisional agreement of the District Valuer concerned before rendering their affidavit or account, but any such agreement is subject to revision before the final assessment is made. Costs of sale are not deductible, even if the property is subject to an overriding trust for sale.

A house owned and occupied by the deceased must normally be valued with vacant possession, but, by an administrative concession,⁵³ any increase above pre-war value attributable to

⁵¹ Under the Lands Tribunal Rules, 1949 (Statutory Instruments, 1949, No. 2263 (L. 29)), by virtue of the Lands Tribunal Act, 1949, and s. 60 (3) of the F. (1909-10) A., 1910. The former Act has not yet been applied to Scotland where notice of appeal must still be given within thirty days in terms of No. 4 (2) of the Land Values (Reference-Scotland) Rules, 1911. The notice of appeal is given on form No. 15, copies of which may be obtained from the Registrar, Estate Duty Office, Edinburgh (see below, pp. 221, 338).

⁵² Such notice being in the form of a letter from the Estate Duty Office, accompanied where appropriate by an assessment of the further duty.

⁵³ C. M. D. 8103. This concession does not affect the value for probate purposes (*e.g.*, fees and penalties).

vacant possession is ignored where the house passes to a near relative ordinarily resident with the deceased who remains in the house and has no other available residence. This concession is discretionary: there is no appeal against the Commissioners' decision as to its applicability, and it is subject to review if the house is sold or let within "a reasonable period of, say, two years".

An undivided share of land should be valued on the basis that the share only, and not the whole property, is to be sold in the open market; the value may thus well be less than the relevant fraction of the value of the whole land. The existence of a statutory trust for sale will make no difference in such a case, in view of s. 16 (4) of the Law of Property Act, 1925. But where the whole property is subject to a non-statutory trust for sale the value of a share is normally ascertained by taking the relevant fraction of the value of the whole land, after deducting from the latter the estimated costs of sale, on the assumption that the owner of the share can compel a sale of the property as a whole.

Where an interest in land is acquired, whether compulsorily or by agreement, by a government department or a local or public authority having compulsory powers, s. 57 of the F. (No. 2) A., 1945, and s. 32 of the F. A., 1949, provide that under certain conditions duty previously paid on such property on a higher value shall be adjusted so as not to exceed the duty on the acquisition price. Where some, but not all, of the specified conditions are fulfilled the Commissioners may grant such relief as may seem to them just. All such relief relates only to the duty on the acquired property and does not affect the rate or amount of duty on other property aggregated therewith.

By the proviso to s. 7 (5) of the F. A., 1894, as amended by ss. 60 (1) and 61 (1) of the F. (1909-10) A., 1910, the principal value of agricultural property (where no part of such value is due to the expectation of an increased income therefrom) shall, for the purpose of s. 16 of the F. A., 1894, not exceed 25 times the annual value thereof as estimated according to the said proviso. Agricultural property comprising cottages occupied by persons employed solely in agriculture in connection with the property must be valued without regard to any suitability of the cottages for other persons (F. A., 1911, s. 18).

War Damage. Immovable property damaged in the recent war should be valued according to its actual condition, ignoring any "value payment" due under the War Damage Act, 1941, but taking into account any "payment of cost of works". "Value payments" should be treated as personal assets and payment of duty thereon may normally be deferred until the amount receivable is known.⁵⁴ Compensation in respect of goods and chattels, whether under the Business Scheme or the Private Chattels Scheme, is treated for duty purposes in the same way as Value Payments.

As regards deaths before July 30, 1949, lands inalienably settled (but not rentcharges thereon) were chargeable with E.D. (and S.D.) on the value of the interest of the person succeeding and were not aggregable, while heirlooms so settled were exempt.^{54a} S. 28 (3) of the F. A., 1949, abolished this distinction and equated such property with other settled property.

Timber forming part of an estate is not chargeable with E.D. until sold. It is ignored in estimating the principal value of an estate or fixing the rate of duty: but E.D. is payable (at the rate due to the estate alone) on the net moneys⁵⁵ received from time to time on sale of timber *felled or cut* after the relevant death and until the next death on which the land is liable to E.D. and is also payable on sale (with or apart from the land) of *timber standing* on the principal value thereof at the death, without deduction for outgoings, but less any E.D. already paid on any sale of cut timber.⁵⁶ The deceased, on whose death the principal value and the rate of E.D. are ascertained, is the person on whose death E.D. was last actually paid on the land, whether owner, life-tenant, or reversioner who predeceases the life-tenant. Any death on which no duty is payable is ignored. Thus the principal value has to be fixed afresh at each death, and the rate

⁵⁴ No duty is payable where the death occurred before March 26, 1941, or (as regards payments under the War Damage (Increase of Value Payments) Order, 1947), before March 21, 1947.

^{54a} F. A., 1894, s. 5 (5); *Nevill v. I. R. Commrs.*, [1924] A. C. 385.

⁵⁵ After deducting "necessary outgoings" which include costs of sale, felling, consequential repairs, management expenses in relation to timber and replanting, but not to the extent that government grants for replanting have been made. Such outgoings may include those in respect of all the woodlands included in the "estate".

⁵⁶ F. (1909-10) A., 1910, s. 61 (5); F. A., 1912, s. 9. Timber here includes trees, wood, underwood and bark (except that no duty is payable on sale of underwood).

of E.D. may also be changed. Duty on timber cut or sold standing cannot be charged on an amount exceeding the value of all the timber at the last death. It is accordingly useful to agree the value of the timber on the death. If part only of the timber is sold standing duty is payable on the appropriate proportion of the value at the death. The value of timber excludes any amenity value.

Timber is excluded for purposes of ascertaining the relief given by s. 13 (1) of the F. A., 1914 (above, p. 93), and if it later becomes chargeable is charged at the higher rate; the proceeds are not added to the duty up to the limit of the margin. Nor does timber prevent the non-aggregation of an estate otherwise not exceeding £2,000 in net value (F. A., 1894, s. 16 (3), above, p. 95). Timber is not part of the agricultural value of property (see above, p. 98).

E.D. on timber sold is a charge on the proceeds.^{56a} The provision in s. 9 of the F. A., 1912, as to accountability does not affect the incidence of the duty.

By s. 42 of and the Fourth Schedule (Part II) to the F. A., 1944, property which (but for the law relating to trading with the enemy—as defined in Part IV) would be liable to E.D. shall be deemed to pass on the death.⁵⁷ The custodian of enemy property is made accountable for the E.D. on all property of which the deceased would (but for such law) have been competent to dispose at his death, but not in excess of that in his hands: and on release by him to the executor of all property to which he would otherwise be entitled the latter is accountable. All property in which the deceased would (but for such law) have had an interest is aggregable.

2. Deductions

S. 7 (1) of the F. A., 1894, authorises deduction, in determining the value of an estate for E.D., of reasonable funeral expenses and debts and incumbrances,⁵⁸ provided that the debts, etc., were incurred or created (if by the deceased) *bona fide* for

^{56a} *Re Smyth, Edwards v. Smyth*, [1918] 1 Ch. 118, C. A.

⁵⁷ Which it might not otherwise have done if vested in the custodian of enemy property, whose title would destroy those of enemy owners.

⁵⁸ Which includes mortgages and terminable charges (F. A., 1894, s. 22 (1) (k), and in Scotland any heritable security or other debt or payment secured upon heritage (*ib.*, s. 23 (10)).

full consideration in money's worth wholly for his own use and benefit and take effect out of his interest. No deduction is allowable where reimbursement can be enforced against another.

As regards funeral expenses a reasonable deduction for mourning and for cost of carriage of the body and of embalming is generally allowed, but not the cost of a tombstone.⁵⁹

S. 7 (1), it has been said, applies only to the deceased's free estate and any other property liable for his debts, not to settled property, gifts, etc.⁶⁰ In any case deduction can only be taken against property subject to the liability.⁶¹ The subsection does not say how or at what date debts should be valued, but in conformity with the general scheme of the Act it would seem that liabilities should be estimated as at the death in the light of all the information then available and that subsequent unforeseen events should be ignored.⁶² But statute-barred debts are allowed only if paid. Debts due under the deceased's covenant, where no consideration in money's worth was given, are not deductible. Marriage does not afford such consideration, and where mutual obligations are undertaken in a marriage settlement the true consideration is not the money but the marriage.⁶³ Where a claim for E.D. arises under another head in respect of a sum covenanted to be paid by the deceased on his death it is covered by non-deduction against his free estate. A covenant to bequeath or appoint on death a fixed sum creates a debt,⁶⁴ which is deductible if for value within s. 7 (1). Such a covenant as to residue or a share thereof does not create a debt.⁶⁵ Payments made to the deceased's widow under a separation agreement are deductible, unless she is otherwise well provided for,

⁵⁹ Cf. *Goldstein v. Salvation Army Assurance Society*, [1917] 2 K. B. 291. The deduction is not affected merely because a death grant is payable under the National Insurance Act.

⁶⁰ *Cowley (Earl) v. I. R. Commrs.*, [1899] A. C. 198, *per* Lord Davey at p. 221; *De Freyne (Lord) v. I. R. Commrs.*, [1916] 2 Ir. R. 456, *per* Cherry, L.C.J., at p. 466.

⁶¹ *Re Barnes*, [1938] 2 K. B. 684; [1939] 1 K. B. 316, C. A., where Lawrence, J., said: "I do not see how in determining the value of an estate allowance can be made for debts beyond the value of the assets out of which the debts are to be met". See *Hirschorn v. Evans*, [1938] 2 K. B. 801, C. A., as to non-liability of joint property for debts of one of the joint holders.

⁶² Thus the deduction for an annuity under s. 7 (1) will not be affected by the actual duration of the annuitant's life. Its value according to the tables annexed to the S. D. A., 1853, will normally be accepted by the Revenue, despite the repeal of that Act and the fact that they never applied to E.D.

⁶³ *H. M. Adv. v. Alexander's Trustees*, 1905, 7 Fra. 367.

⁶⁴ *Graham v. Wickham* (1863), 1 De G. J. & Sm. 474.

⁶⁵ *Muir's Trustees v. Ld. Adv.*, 1874, 11 S. L. R. 157.

but not sums promised by the deceased for philanthropic and similar purposes.⁶⁶ The renunciation by a wife or child of their rights under Scots law in the deceased's estate is not consideration within s. 7 (1).⁶⁷ By s. 57 of the F. (1909-10) A., 1910, no allowance is to be made against any property passing or deemed to pass on the death of the deceased for any debt incurred for the purchase of any interest in expectancy in such property where the person from whom such interest is acquired becomes entitled to any interest in such property under any disposition made by, or through devolution of law from, or under the intestacy of, the deceased.⁶⁸ Thus if the deceased being a life-tenant of property purchases a reversion in consideration of a mortgage and devises the property to the reversioner, the mortgage is not deductible against the deceased's estate.

"*Bona fide*" in s. 7 (1) means that the debts shall be genuine, not fictitious.⁶⁹ "Wholly for the deceased's own use and benefit" applies to the consideration, not to the debt.⁷⁰ Thus if the deceased contracts to purchase property from a third party for the benefit of a donee the cost, if unpaid at the deceased's death, may be deducted against his estate as the deceased could have had the benefit of the contract; in such a case E.D. is payable on the gift of the property if made within the statutory period. But if the deceased could not have had the benefit of the contract, *e.g.*, if it was for additions to the donee's property, no deduction is allowable and no claim is made as in respect of a gift. In some such cases there may be an imperfect gift, when the property in question will form part of the deceased's free estate.⁷¹

Guarantee debts are allowed under s. 7 (1) (b), if actually paid out of the deceased's estate, and recoupment cannot be obtained, even though not actually incurred for consideration wholly for the deceased's own use and benefit, etc. In dealing

⁶⁶ *H.M. Adv. v. Gunning's Trustees*, 1902, 39 S. L. R. 534.

⁶⁷ *H.M. Adv. v. Alexander's Trustees*, 1905, 7 Fra. 367; *H.M. Adv. v. Warrender's Trustees*, 1906, 8 Fra. 371.

⁶⁸ Passed in consequence of the decision in *Att.-Gen. v. Richmond and Gordon (Duke)*, [1909] A. C. 466. Where the debt was only partly incurred as stated or the reversioner becomes entitled to only part of the property the disallowance of the deduction is reduced proportionately.

⁶⁹ *Att.-Gen. v. Richmond and Gordon (Duke)*, [1909] A. C. 466, *per* Lord Macnaghten, at p. 472.

⁷⁰ *Per* Lord Atkinson in *ibid.*, at p. 478.

⁷¹ See above, pp. 17, 27.

with the estate of a married woman, it should be borne in mind that a husband is liable for his wife's "necessaries" and that she may have contracted a liability as his agent; in the case of "necessaries" there is a presumption that she is contracting as his agent.⁷² In such cases no deduction is permissible in her estate. A husband is liable for income tax and surtax on the income of his wife (if living with him), unless they obtain separate assessments under Rule 17 or s. 42 (9) of the F. A., 1927, or unless an assessment is made against the wife or her estate under s. 32 (1) of the F. A., 1950. Deduction is therefore allowable against the estate of a deceased husband for tax assessed on him in respect of his wife's income so far as actually paid out by his estate; and against the estate of a deceased wife for such tax if the spouses were separately assessed, and even if they were not but payment is actually made out of her estate.

S. 31 of the F. A., 1939, enacted that any allowance which would otherwise be made under s. 7 (1) (a) for a debt or incumbrance created by a disposition made by the deceased should be abated to an extent proportionate to the value of any of the consideration given therefor which consisted of (a) property derived from the deceased or (b) consideration not being such property but given by any person who was at any time entitled to or amongst whose resources there was at any time included any property derived from the deceased, unless and to the extent that the Commissioners are satisfied that the application of all the property derived from the deceased was insufficient to provide such consideration, or that such property was not so derived with a view to facilitating the giving of the consideration. Thus if the deceased died owing £10,000 borrowed for full consideration from A and B equally, and had made a gift of £2,000 to A more than five years before his death, the £5,000 due to B is deductible but the £5,000 due to A is subject to abatement to the extent of the £2,000 derived by him from the deceased, unless A can show that the £2,000 was not disposed of by the deceased with a view to enabling or facilitating the giving of the consideration. Where the consideration consisted of property derived from the deceased it is not necessary to show that it was so derived with a view to facilitating the giving of the consideration

⁷² *Paquin v. Beauclerk*, [1906] A. C. 148; but this presumption can be rebutted by evidence or by habitual conduct to the contrary.

(e.g., A covenants by marriage settlement to pay £5,000 on his death for his widow for life, etc.; later he is released from this covenant in consideration of a further covenant to pay her an annuity: the annuity is not deductible against his estate. No deduction, in fact, can be taken for a debt due by the deceased to the trustees of property settled by him). The principal object of these provisions is to prevent loss of duty by means of a series of transactions creating a debt due from the deceased for full consideration which is actually provided by him.

Where the deceased died after June 26, 1940, and had created a charge on his estate in favour of a relative of his (as defined in s. 44 of the F. A., 1940)⁷³ in consideration of an annuity (as defined in that section) such charge, being a disposition of property (see ss. 44 (1) and 45 (1) of that Act), is not deductible under s. 7 (1) of the F. A., 1894.⁷⁴ This provision, undermined by the decision in *Re Earl Fitzwilliam's Agreement*⁷⁵, was reaffirmed, without reliance on the doctrine attributed to *Att.-Gen. (Ir.) v. Smyth*⁷⁵, by s. 46 (1) of the F. A., 1950.

S. 7 (2) of the F. A., 1894, requires debts due to persons out of Great Britain (unless contracted to be paid, or charged on property, in Great Britain) to be deducted in the first place against personalty situate out of Great Britain on which E.D. is paid; but allows a subsequent repayment of E.D. so far as the deceased's personalty situate in the country where the creditor resides is insufficient to meet such debts. If the deceased had no personal property outside Great Britain debts due to persons outside Great Britain are by concession allowed in the first place against his British estate.

S. 7 (3) of the F. A., 1894, allows deduction against the value of property situate out of Great Britain of not exceeding 5 per cent. of such value for expenses of administration or realisation due to its situation, i.e., additional to the probable expense had the property been situate in Great Britain. S. 7 (4) of the Act allows deduction against the value of foreign property⁷⁶ of duty payable thereon in the country of its situation. By concession, this subsection is applied not only to foreign countries⁷⁷ but to British possessions⁷⁷ to which s. 20

⁷³ See above, p. 69.

⁷⁴ See above, pp. 69-70.

⁷⁵ See above, p. 70.

⁷⁶ Not against the E.D. on such property.

⁷⁷ Except where relief from dual taxation is due under any agreement made under s. 54 of the F. (No. 2) A., 1945.

of the Act (see above, p. 85) does not apply. It is also applied in the case of shares in non-British companies which are British assets according to English or Scots law but under dominion or colonial law may be deemed to be situate in a dominion or colony and so liable to duty there; and to shares in a South African company, which are situate in Great Britain by reason of the certificates being here at the death, but which, being registered on a British duplicate register, cannot be transferred without payment of the South African duty.

3. Assessment and Payment of Duty

S. 8 (3) of the F. A., 1894, requires the executor ⁷⁸ of the deceased to specify to the best of his knowledge in accounts annexed to the Inland Revenue Affidavit ⁷⁹ all property on which E.D. is payable on the death of the deceased. This liability is independent of the executor's accountability for E.D. on certain kinds of property (see below, Ch. V). By s. 8 (5), indeed, every person accountable for E.D. on any property or whom the Commissioners believe to have taken possession of property liable to E.D., can be required to supply such particulars as the Commissioners may require of that or of any other property so liable on the same death to the best of their knowledge.^{79a} S. 8 (6) imposes penalties on persons wilfully failing to comply with these and other provisions of s. 8.

S. 8 (14) empowers the Commissioners to prescribe the forms of affidavits, accounts, and statements in which this information is to be rendered and to require such to be rendered in duplicate and to be verified by such documents as they may prescribe. Such accounts and statements must be sworn, but s. 13 (2) of the F. A., 1900, permits correction thereof without oath.

The Inland Revenue affidavit is a sworn inventory of the deceased's own free estate required to be rendered in the

⁷⁸ Defined in s. 22 (1) (d) of the Act (itself extended by s. 2 (1) of the Administration of Estates Act, 1925), and for Scotland in s. 23 (11).

⁷⁹ Defined in s. 22 (1) (n) and for Scotland in s. 23 (5).

^{79a} S. 8 (1) of the Act incorporated for E.D. purposes s. 37 of the Customs and Inland Revenue Act, 1881, empowering the Commissioners to require persons administering an estate to furnish additional evidence as to the estate within three years of representation.

appropriate Probate Registry on obtaining probate of his will or administration (or in Scotland, confirmation).⁸⁰ Payment of the E.D. is made a peremptory condition of probate.⁸¹ It should include the whole of the deceased's free estate (subject to s. 6 (3) of the F. A., 1894: see below, p. 124), and may also, if desired, include, and offer duty upon, any other property passing on his death. Property over which the deceased had and exercised a general power of appointment (other than a "controlled" power exercisable only by express reference) is treated for all purposes as his free estate, as is a share of property of which he was life-tenant if he was in events absolutely entitled (whether directly or by derivation through the estate of a dead beneficiary or otherwise) to the capital of such share on his own death. Such share is deductible in the E.D. account even if it is not liable in full (owing to deduction of debts, etc.) as part of the life-tenant's estate. Where the deceased was life-tenant and was also entitled to the capital of the property or a share therein expectant on the death of a subsequent life-tenant it is the practice to charge E.D. on the capital of the property (where the same is liable to duty) as passing under the disposition creating the life-interest, thus freeing the reversion from any further claims as part of his free estate.

Where the grant is obtained without professional assistance the executor or intending administrator must apply personally at the appropriate Probate Registry (as regards the Principal Registry at the Personal Application Department, Ingersoll House, Kingsway, W.C.2) with the death certificate, will (if any) and full particulars of the deceased's estate.^{81a} In other cases (a) where the deceased died on or after April 10, 1946, domiciled

⁸⁰ S. 8 (1) of the F. A., 1894, incorporates earlier provisions dispensing with a grant of representation for the payment of sums under £100 by friendly and building societies, savings banks, etc. In such cases E.D. if payable may be accounted for on form C-1 (as to which see below). In all other cases a grant is required by statute.

⁸¹ *Per* Lord Shaw in *Winans v. Att.-Gen.*, [1910] A. C. 27, at p. 49. See also *In the Goods of Beech* (*Times*, August 9, 1904) and *In the Goods of Grimthorpe (Baron)* (*Times*, June 6, August 1 and 8, 1908).

^{81a} In Scotland there is no Personal Application Department. Where, however, the estate does not exceed £500 gross, application may be made to have the inventory prepared and filled in for confirmation purposes by the Commissary Clerk of Edinburgh (if deceased died domiciled in Midlothian) or the Sheriff Clerk of the County in which the deceased died domiciled, or the Commissary Clerk of Edinburgh where deceased died furth of Scotland or without any fixed or known domicile.

in Great Britain, leaving a net estate of less than £1,500 the affidavit duly sworn should be lodged at the appropriate Probate Registry without prior reference to the Estate Duty Office; (b) where E.D. is payable (except by fixed stamp) the affidavit, with the "summary" and "warrant" completed and a cheque payable to the "Commissioners of Inland Revenue" for the estimated amount of the E.D. and interest, but not Court fees, should be sent to the Accountant-General (Cashier), Inland Revenue, Minford House, Rockley Road, West Kensington, W.14, whence it will be returned assessed and receipted to the applicant to forward to the Probate Registry, unless he has requested that it should be forwarded direct to a District Registry; (c) where the net estate amounts to £1,500 or over but no E.D. is payable, the affidavit should be sent to the Controller, Estate Duty Office (Affidavit Branch), Inland Revenue, Minford House, as above. In Scotland inventories relating to persons dying on or after April 10, 1946, may be sent direct to the Sheriff-Clerks where the estate does not exceed £1,500 net. In other cases the procedure is similar to that in England and Wales.^{81b} The affidavit or inventory is eventually filed as part of the records of the Estate Duty Office, but a duplicate of the affidavit, with a certificate of payment of duty, can also be obtained on application at the time of payment to the Accountant-General, Inland Revenue, and in Scotland an official list of the movable estate situate in the United Kingdom as shown in the inventory is contained in the confirmation.

The *Forms of Affidavit* for use in England⁸² are :—

- A-4, where the only property is the deceased's own free personal estate in Great Britain (including property over which he had and exercised by his will a general power of appointment).
- A-6, as in the case of A-4, but where the free estate includes real estate.
- A-7, where the property consists of free estate and other property, settled or otherwise, *i.e.*, this form is to be used in all cases

^{81b} The inventory, duly sworn, is lodged with the Registrar, Estate Duty Office, Edinburgh, with a cheque, payable to the Comptroller of Stamps and Taxes, Edinburgh, for the estimated amount of any Estate Duty and interest due.

⁸² Most forms of affidavit and account can be obtained at the following Post Offices: Throgmorton Avenue, E.C.2, London Chief Office, King Edward Building, E.C.1, Fleet Street, E.C.4, East Strand, W.C.2, High Holborn, W.C.1, and Piccadilly, S.W.1, and at Head Offices outside the Metropolitan Postal District.

in which no other form is appropriate. It is also used (suitably amended) for a grant relating to settled land.⁸³

Each form is supplied with a separate schedule (form No. 37⁸⁴ or, where agricultural property is concerned, form No. 37A) for details of real and leasehold property, and in England with a questionnaire (form No. 36) relating to the estate generally, which should always be carefully completed to avoid a repetition of inquiries at a later stage.

A-5, to lead to a second or subsequent grant of representation (*e.g.*, a grant *de bonis non*, or double probate, or a cessate grant) except where the property concerned was not within the scope of the previous grant, when the appropriate form for an original grant should be used. No provision is made on form A-5 for payment of duty; it is merely a certificate of payment, to obtain which application should be made on form 39. Accordingly the full duty should be first paid (if necessary by corrective affidavit). Where a full grant following a grant *pendente lite* or *caeterorum* or a revoked grant is being obtained, form A-5 is not appropriate and application should be made to the Estate Duty Office for the duty-paid stamp to be transferred from the original to the new affidavit.

Y-1, where the deceased was domiciled out of, and died possessed of no property within, Great Britain, but a grant is required in respect of property since transmitted to Great Britain.

Where a grant is required and the deceased left no property in Great Britain (other than that of which he was a trustee only) form A-4 may be used, suitably amended.⁸⁵

⁸³ There are also, for deaths before April 10, 1946, (a) Form B-2, where the gross value of the estate and of other unsettled property does not exceed £500 and there is no settled property, so that the 30s. or 50s. fixed duty is payable under s. 16 (1) of the F. A., 1894; and (b) Form B-4, where the fixed duty is payable as stated above, but there is also settled property, on which it is desired to pay the *ad valorem* duty when obtaining the grant. These affidavits should be sent unstamped to the Estate Duty Office (Affidavit Branch), Rockley Road, W.14, for examination and assessment; on return they should be stamped before being lodged with the Probate Registry. Stamps for paying these fixed duties are obtainable from the Controller of Stamps, Room 3, Bush House, South-West Wing, W.C.2, and from provincial Inland Revenue stamp offices. (These forms of affidavit can still be used where appropriate, although no duty is now payable on the unsettled estate.)

⁸⁴ Or in Scotland, No. 16.

⁸⁵ The forms of affidavit and account most commonly in use can be obtained at Head Post Offices outside the Metropolitan Postal District, and also at the London Chief Office, King Edward Building, E.C.1, Throgmorton Avenue, E.C.2, Fleet Street, E.C.4, High Holborn, W.C.1, East Strand, W.C.2, Chancery Lane, W.C.2, and Piccadilly, S.W.1, Branch Offices.

In Scotland the forms of inventory (which there replaces the affidavit) are :—

B-1, corresponding to the English form B-2.

A-4, for use in the same circumstances as the English form A-4.

A-1, for use where no other form is appropriate.

After the grant is obtained, the Inland Revenue affidavit is examined in the Estate Duty Office to ensure that the whole of the deceased's estate has been included at its correct value and any further points requiring elucidation are raised by correspondence with the accountable parties or their agents.

In both England and Scotland form D-1 is used as a corrective affidavit or inventory to amend the value of the estate and to pay further E.D. or obtain a repayment in all cases where the original payment was made on an Inland Revenue affidavit or inventory or previous corrective affidavit or inventory. It should always be rendered in duplicate in England,^{86a} and where fresh property is disclosed or a return of duty is sought should be sworn. In repayment cases the grant should be forwarded for marking after assessment.

It should be noted that s. 6 (3) of the F. A., 1894, allows the executor to state in the Inland Revenue Affidavit that he does not know the value of property forming part of the estate and to undertake to bring in an account of it and pay any further duty (on it and the other property) for which he may be liable as soon as the value is known. Payments of uncertain amount under Government compensation schemes, *e.g.*, for prohibition of sale of goodwill under the National Health Service Acts, 1946 and 1949, for loss of development rights under the Town and Country Planning Act, 1947, may be treated as within this provision (and see above, p. 114, as to "value payments" under the War Damage Act, 1941). S. 8 (7) of the F. A., 1894, provided that where for any reason too little duty is paid the additional duty should be payable as duty in arrear unless a certificate of discharge had been given: and s. 8 (12) that where the Commissioners are satisfied that too much duty has been paid the excess shall be repaid.⁸⁶

⁸⁶ With 3 per cent. interest where they have overvalued the property (and not merely accepted the parties' valuation). But otherwise no interest is payable on money in the hands of the Crown (*Re Gosman* (1881), 17 Ch. D. 771, where Jessel, M.R., said: "There is no ground for charging the Crown with interest. Interest is only payable by statute or contract").

^{86a} Corrective inventories are not lodged in duplicate in Scotland.

Grants issued outside England or Scotland can be resealed in those countries, but an Inland Revenue affidavit must be delivered in all cases. No grant issued in England is now accepted in Eire for resealing, nor any Eire grant in England. Where a colonial or Northern Irish grant has to be resealed in both England and Scotland, or where the deceased died domiciled in Eire and separate grants are required in both England and Scotland, the full British duty on the English and Scottish personalty must be paid on the Inland Revenue affidavit first presented, or on the grant first obtained, and the affidavit for the second application in the other country is endorsed by the office receiving the full duty with a certificate of payment. To save time the affidavit for the second application should be sent with that on which the full duty is to be paid. No certificate is required to make English grants effective in Scotland where the deceased died domiciled in England, and in such cases application should be made to the Commissary Clerk, Edinburgh.

The forms of E.D. account (where duty is *not* paid on the Inland Revenue affidavit), for both England and Scotland,^{87a} are :—

- C-1, where no duty has yet been paid on the property: to be delivered in duplicate, one copy being sworn.
- C-3, where a second or subsequent instalment⁸⁷ of E.D. is payable, whether the first instalment was paid on the Inland Revenue affidavit or on form C-1.
- D-2, corrective account where the original payment was made on form C-1: to be delivered in duplicate, one copy being sworn where fresh property is disclosed or a repayment is sought. In the latter case the original stamped account should be forwarded.

These accounts should be forwarded by post to the Estate Duty Office (or they may be left by hand), where the amount of duty payable at the appropriate rate will be assessed (after the Examiner is satisfied that the account is correctly drawn and the correct property at the proper valuation is included, which may necessitate the return of the account for amendment or explanation). The account (or the copy where rendered in duplicate) is then returned, the amount of the duty and interest being shown both on the account and on a separate demand, both of which

⁸⁷ See below, p. 127.

^{87a} The Scottish forms can be obtained at the Estate Duty Office, Edinburgh, or at authorised Stamp and Post Offices in the country.

should be forwarded to the Accountant-General (Cashier), Inland Revenue, Somerset House, W.C.2, with a cheque to the amount of the duty so assessed drawn in favour of the "Commissioners of Inland Revenue, Death Duties, *re* — deceased, or bearer" and crossed "Bank of England—Inland Revenue" or with a money order (obtainable free of commission on production of the assessed account), crossed similarly.⁸⁸ Full instructions are given at the time of assessment. The account so forwarded is then returned impressed with a stamped receipt.

Simple interest at 2 per cent.⁸⁹ is charged on all E.D. (without deduction for income tax) from the date of the death to the date of receipt in the office for assessment,⁹⁰ except (1) in the case of duty on real or heritable estate, when interest runs from the date of sale, exchange or mortgage (or in the case of registered land the date when the charge for duty is overridden by disposition by way of exchange or charge)⁹¹ or twelve months after the death, whichever is the earlier.⁹² There are also exceptions in the case of the fixed duties,⁹³ interests in expectancy if the option to postpone payment is exercised,⁹⁴ when interest runs from the date when the interest falls into possession, and also objects of national, etc., interest⁹⁵ and timber,⁹⁶ when interest runs from the date when the duty becomes payable.

Deduction may be taken in a C-1 account for E.D. payable on the death of a life-tenant for fees payable to the Public Trustee or to a banking, insurance or other corporation, as follows: where the trust ends on the death, the withdrawal fee, and, where it does not, the capital to produce the income fee (grossed up according to the current rate of income tax), may be deducted.

⁸⁸ In Scotland the payment should be made, either personally or through the post by cheque or money order, to the Comptroller of Stamps and Taxes, 10 Waterloo Place, Edinburgh.

⁸⁹ F. A., 1894, s. 6 (6), F. A., 1896, s. 18, F. A., 1919, s. 30, F. A., 1933, s. 43, and F. A., 1943, s. 27. For the period up to July 30, 1919, and from April 26, 1933, to April 12, 1943, the rate is 3 per cent., and from July 31, 1919, to April 25, 1933, it is 4 per cent.

⁹⁰ If the account is returned for amendment interest is not charged for the period while it is in the Office. In the case of an affidavit three days of grace after it is handed out or five days after posting are allowed before further interest is assessed.

⁹¹ Law of Property Act, 1925, s. 17 (3); Land Registration Act, 1925, s. 73 (6).

⁹² F. A., 1894, s. 6 (8).

⁹³ See above, p. 123.

⁹⁴ See above, p. 108.

⁹⁵ See above, p. 73.

⁹⁶ See above, p. 114.

E.D. on real or heritable estate may, if desired, be paid by eight equal yearly or sixteen equal half-yearly instalments, the first instalment being due at, and interest running from, the end of twelve months from the death.⁹⁷ If the first instalment is offered before the second is due, interest on that instalment is assessed from the end of twelve months from the death. If the second instalment is offered before the third is due, interest on all unpaid instalments is assessed from the date when the first instalment was due to that when the second was due, plus interest on the second instalment from the last-mentioned date to date of receipt of the account for the second instalment, and so on. Where several instalments are in arrear interest is assessed on all unpaid duty from the date when the last paid instalment was due (or from twelve months after the death) up to the date when the last unpaid instalment became due, and from the last-mentioned date to date of receipt of the account on the instalments in arrear. If the property is conveyed by way of sale, exchange or legal mortgage (other than a mortgage effected under s. 9 of the F. A., 1894, for raising the duty) the whole duty is payable from the completion of the sale, etc.⁹⁷ In this event form C-3 should be rendered in duplicate.

E.D. on annuities or other definite annual sums referred to in s. 2 (1) (d) of the F. A., 1894,⁹⁸ may, if desired, be paid by four equal yearly instalments, the first being due at, and interest running from, the end of twelve months from the death.⁹⁹

In all these cases where E.D. is being paid by instalments the balance of the duty may be paid in one sum at any time.

S. 9 (5) of the F. A., 1894, empowers a person authorised or required to pay E.D. on any property to raise the duty (and interest and expenses properly incurred by him therefor) by sale or mortgage of the property. By s. 9 (7) capital moneys, proceeds of settled property and money liable to be laid out on the trusts of the settlement may be expended in paying E.D. on any property subject to the same settlement and trusts.

⁹⁷ F. A., 1894, s. 6 (8); Law of Property Act, 1925, s. 17 (3); Land Registration Act, 1925, s. 73 (6). An undivided share of English realty ranks as real estate for this purpose (*Att.-Gen. v. Public Trustee, Tuck and Another*, [1929] 2 K. B. 77); so also does real estate directed to be sold by the deceased's will, or (where the sale is not to take place until his death or earlier with his consent, if the property is still unsold) under a prior disposition, and personally impressed with a trust (other than under the deceased's will) for investment in realty, but not capital moneys. ⁹⁸ See above, p. 36. ⁹⁹ F. A., 1896, s. 16.

In Scotland, by s. 23 (18) of the Act, any person authorised to raise by mortgage or sale E.D. which he has paid in respect of any property not vested in him may apply to the Court of Session for an order for sale of the property and payment to such person of the amount of the E.D. paid by him or for an order ordaining the person in whom the property is vested to grant a bond and disposition in security over the property in favour of the person who has paid the duty, with authority to the clerk of court to execute same, which bond and disposition shall be a first charge on the property after any debt or incumbrance allowable against the property for E.D. purposes.

S. 56 of the F. (1909-10) A., 1910, as amended by s. 49 of the F. A., 1946, authorises the Commissioners to accept real or leasehold property in satisfaction of any duty payable on any death in respect of any property (whether passing on such death or not). Loans to the Treasury free of interest, money in the Post Office Savings Bank and Savings Certificates can be used for paying duty on the estate of which they form part.¹ In all these cases application should first be made by letter to the Estate Duty Office.

4. Composition and Commutation of Duty

By s. 13 of the F. A., 1894, where it is difficult, by reason of the number of deaths on which property has passed, or the complicated nature of the different persons' interests therein, or otherwise, to ascertain exactly the amount of the death duties payable, or to do so without undue expense, the Commissioners may assess a sum as appears proper in composition for all or any of the duties in respect of the property and the various interests therein in full discharge and shall give a certificate of discharge accordingly, but such certificate shall not discharge any person in case of fraud or failure to disclose material facts.

By s. 12 of the F. A., 1894, the Commissioners in their discretion may, on application by a person entitled to an interest in expectancy, commute the E.D. which would become payable in respect of such interest, and for that purpose shall set a present

¹ 4 per cent. Funding Loan, 1960-90 (at the price of £80 per £100 stock) and 4 per cent. Victory Bonds (at par) are accepted in payment of Death Duties provided they formed part of the estate passing on the death: F. A., 1917, s. 34; F. A., 1918, s. 42; but in view of the present prices of these securities these provisions are not at present operative.

value on such duty, having regard to the contingencies affecting liability, rate and amount of duty, and reckoning interest at 3 per cent. Generally speaking, commutation is agreed to for some valid reason such as the sale of the interest in expectancy, provided that the person on whose death the claim will arise is in ordinary good health. Where agreed to it is made on the present value of the property, the duty being calculated at the appropriate rate and then discounted according to the expected duration of the outstanding prior interest. Form D.1 may be used in this case.

In cases not covered by s. 12, *e.g.*, as regards duty payable on the death of a life-tenant in respect of settled property, commutation is almost invariably refused, unless the circumstances are most exceptional. No commutation of E.D. payable in the event of a life-tenant or annuitant dying within five years of the determination of his interest is entertained; the correct course is to retain a sum sufficient to meet the possible duty.² But s. 44 (1) of the F. A., 1950, provides that, in addition to accountability under any other provisions, the trustees of a settlement at the date of death, if it is then subsisting, or, if not, the last trustees thereof shall be accountable for E.D. payable under s. 43 of the F. A., 1940, on a death after April 18, 1950, as regards property subject to the settlement after that date. S. 44 (3) exempts trustees in such cases from any amount in excess of the amount certified by the Commissioners on receipt of all necessary information. S. 44 (4), (5) and (6) gives trustees who may become accountable as aforesaid certain remedies against the property and against other persons. In the case of land in England and Wales, as a charge for duty can be overridden by a sale under the Settled Land Act, 1925, or under a trust for sale, there is less need than formerly to commute E.D. for protection of a purchaser. The forms of account are No. 20 in England and No. 19A in Scotland, both to be rendered in duplicate, and obtainable only from the Estate Duty Office, London and Edinburgh.

² Cf. *Taylor v. Poncia* (1901), 49 W. R. 596.

CHAPTER V

ACCOUNTABLE PERSONS AND INCIDENCE OF
ESTATE DUTY1. *Executors*

By s. 8 (3) of the F. A., 1894, the executor is not only bound to give particulars of all property liable to E.D. on his testator's death¹, but is thereby made accountable for the E.D.² on all personal property of which his testator was competent to dispose at his death. "Executor" is defined in s. 22 (1) (d) and, for Scotland, in s. 23 (11): it includes an executor by representation³, an administrator *de bonis non* or *pendente lite* and an executor *de son tort*.⁴ S. 8 (3) limits the executor's liability to the amount of the assets received by him or which he might have received as executor⁵ but for his neglect or default. S. 8 (6) imposes a penalty on persons wilfully failing to comply with s. 8 (3).

S. 6 (2) of the F. A., 1894, provides that the executor shall pay the E.D. for which he is accountable under s. 8 (3) on delivering the Inland Revenue Affidavit and that he may also pay the duty on any other property passing on the death if, where he is not accountable, the persons who are accountable request him to do so.⁶

The meaning of property of which the deceased was competent

¹ See above, p. 120.

² Including interest on the duty, which by s. 18 (1) of the F. A., 1896, is "recoverable in the same manner as if it were part of the duty".

³ Administration of Estates Act, 1925, s. 7.

⁴ *New York Breweries Co., Ltd. v. Att.-Gen.*, [1899] A. C. 62.

⁵ Which is not identical with property passing to the executor as such, found in s. 9 (1): the former category is the wider (*O'Grady v. Wilmot*, [1916] 2 A. C. 20).

⁶ Earlier provisions for the delivery of an affidavit of the deceased's estate before probate or administration, for rendering corrective affidavits and for administering an estate without a grant or an account, were incorporated by s. 8 (1) of the F. A., 1894, which applied to E.D. the then-existing law and practice relating to any death duty. Such earlier provisions included the Stamp Act, 1815, ss. 37 and 38, the Crown Suits Act, 1865, s. 57, the Customs and Inland Revenue Act, 1881, ss. 29, 30, 32, 37, 39 and 40, and (as to Scotland) the Probate and Legacy Duties Act, 1808, s. 38. S. 2 (1) of the Administration of Estates Act, 1925, extended to real estate all then-existing enactments, etc., as to probate and administration of chattels real.

to dispose has been considered above (p. 15). The executor must accordingly pay the E.D. in respect of the deceased's share of personal property passing by survivorship under a true joint tenancy, his personal property situate out of Great Britain,⁷ even if vested in non-British executors, and personal property over which he had a general power of appointment or a sole power of revocation whether exercised or not.

The definition of personal property is a question of general law, which can only be touched on here. Leaseholds are personal estate.⁸ As regards Scotland, "personal property" means "moveable property" and "real property" includes "heritable property".⁹ Partnership property, even if it includes realty, is always personal and moveable estate.¹⁰ The effect of the doctrine of conversion should, however, be noted. Where trustees are directed to sell realty or to invest personalty in real estate, the trust property is converted in equity into personalty or realty respectively from the death of the testator or execution of the disposition. But if the trust for conversion wholly fails there is no conversion.¹¹ If the trust only partially fails, conversion is nevertheless effected.¹² Reconversion can take place if all parties interested join in, but it must be clearly evidenced, unless the property is "at home" in one person absolutely entitled in possession.¹³ A trust to sell at the request or with the consent of another person is treated by the Revenue as not effecting conversion unless and until the property has actually been sold or agreed to be sold, provided the request or consent amounts to a real fetter on sale. In any case a power of sale does not of itself effect conversion. Where land is subject to a trust for sale created only by the Acts of 1925 an undivided share

⁷ By a concession announced in the House of Commons on July 6, 1949, E.D. on substantial holdings of "blocked" assets situate overseas may be deferred until such are received in this country.

⁸ Except for purposes of S.D.

⁹ F. A., 1894, ss. 23 (8) and (9).

¹⁰ *Att.-Gen. v. Hubbuck* (1884), 13 Q. B. D. 275, C. A.; *Forbes v. Steven* (1870), L. R. 10 Eq. 178; Partnership Act, 1890, s. 22.

¹¹ E.g., as in *Re Grimthorpe* (Lord), *Beckett v. Grimthorpe* (Lord), [1908] 2 Ch. 675, C. A.

¹² *Ackroyd v. Smithson* (1780), 1 Bro. C. C. 503; *Att.-Gen. v. Lomas* (1873), L. R. 9 Ex. 29; *Re Richerson. Scals v. Heyhoe*, [1892] 1 Ch. 379.

¹³ *Macfarlane v. Ld. Adv.*, [1894] A. C. 291.

thereof is chargeable with duty as realty,¹⁴ except that a beneficiary entitled to such share under the intestacy of a person dying after 1925 takes it as an interest in personalty, although the duties on the intestate's death are chargeable as on realty.

As ss. 1 and 2 (1) of the Land Transfer Act, 1897, vest the deceased's free real estate in his personal representative as trustee for the beneficiary and s. 2 (2) extends the duties and liabilities of the personal representative in respect of personal estate to real estate, it is arguable that the executor's liability under s. 8 (3) of the F. A., 1894, was thereby extended to real estate so vesting in him; and similarly as to the substituted provisions of the Administration of Estates Act, 1925, ss. 1 (1) and 2 (1). But in view of the saving provisions in s. 5 of the first-mentioned and s. 53 (3) of the last-mentioned Acts, the executor's liability as to real estate is now based primarily on s. 16 (1) of the Law of Property Act, 1925, which makes a personal representative¹⁵ accountable for all death duties on his deceased's death in respect of land (including settled land) devolving on him.

In the case of registered land s. 73 (3) of the Land Registration Act, 1925, makes the personal representative accountable for all death duties leviable or payable in respect of all registered land vesting in him on a death. In each case the liability is limited to the amount of the assets (including land) vested in him and for the time being available or which would have been so but for his neglect or default.¹⁶ As to what land devolves on the executor, see s. 1 of the Administration of Estates Act, 1925. It includes land over which the deceased exercised by will a general power of appointment, but not an entailed interest, unless disposed of by the deceased's will, nor a beneficial interest as joint tenant where another tenant survives the deceased.¹⁷ It

¹⁴ Law of Property Act, 1925, s. 16 (4); Administration of Estates Act, 1925, s. 53 (3); *Att.-Gen. v. Public Trustee, Tuck and Another*, [1929] 2 K. B. 77.

¹⁵ Defined in s. 205 (1) (xviii) of the Law of Property Act, 1925, as "the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties . . . any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court", to which s. 3 (xvii) of the Land Registration Act, 1925, adds for the purpose of that Act the special personal representatives for the purposes of any settled land, in relation to that land.

¹⁶ Law of Property Act, 1925, s. 16 (6); Land Registration Act, 1925, s. 73 (14).

¹⁷ Administration of Estates Act, 1925, s. 3.

does not include real estate of which the deceased was life-tenant, but such property will devolve on his general executor if the settlement comes to an end on his death.

The E.D. in respect of the deceased's personal estate in Great Britain (excluding objects of national, etc., interest when subsequently sold, for the duties on which the person by whom or for whose benefit they were sold is accountable,¹⁸ and undivided shares of freeholds converted only by a statutory trust for sale¹⁹) is a testamentary expense²⁰ and is accordingly with his other testamentary expenses payable out of his residuary estate (or out of his property undisposed of by will, if any), and if this is insufficient out of his other estate in the order laid down in the First Schedule to the Administration of Estates Act, 1925 (subject to any contrary direction in his will).²¹ Deposits in savings banks, the subject of a nomination by the deceased,²² are treated as passing for this purpose under his will or intestacy. But the E.D. on personal property situate out of Great Britain,²³ or over which the deceased had a general power of appointment by will (whether exercised or not²⁴), and his real estate (including an undivided share subject only to a statutory trust for sale²⁵) and *donationes mortis causa*,²⁶ is not a testamentary expense. In all the last-mentioned cases it was held that the property did not pass to the executor as such and accordingly that the E.D. thereon was a charge on the property under s. 9 (1) of the Act

¹⁸ F. A., 1930, s. 40 (2); see above, p. 73.

¹⁹ In view of Law of Property Act, 1925, s. 16 (4), that nothing in that Act shall alter any duty payable in respect of land or impose any new duty thereon, etc.

²⁰ *Re Clemow, Yeo v. Clemow*, [1900] 2 Ch. 182.

²¹ As regards incidence, the E.D. (and also all other duties payable out of residue) and interest is subject to the rule in *Allhusen v. Whittell* (1867), L. R. 4 Eq. 295, and accordingly where the estate is bequeathed to a life-tenant the latter must be deprived of the income on such a sum as with interest at the average rate yielded by the estate in each year from the death to the date of payment would produce the duty and interest (*Re McEuen, McEuen v. Phelps*, [1913] 2 Ch. 704; *Re Wills, Wills v. Hamilton*, [1915] 1 Ch. 769).

²² P. O. S. B. Regulations, 1921, r. 88 (1).

²³ *Re Scull, Scott v. Morris* (1917), 87 L. J. Ch. 59, C. A.

²⁴ *O'Grady v. Wilmot*, [1916] 2 A. C. 231.

²⁵ *Re Sharman, Wright v. Sharman*, [1901] 2 Ch. 280; *Re Morris, Skinner v. Sanders*, [1927] W. N. 146 (a decision on s. 16 (5) of the Law of Property Act, 1925, which was held to have prevented that Act from altering the incidence of E.D. on real estate; see also *Re Owers, Public Trustee v. Death*, [1941] Ch. 17); *Re Wheeler, Jameson v. Cotter*, [1929] 2 K. B. 81 (a case of an undivided share).

²⁶ *Re Hudson, Spencer v. Turner*, [1911] 1 Ch. 206.

(see below, p. 141) and was not a testamentary expense. In such cases the executor has a right of reimbursement in respect of any duty paid by him (see below, p. 143).

2. *Beneficiaries, trustees, and alienees*

S. 8 (4) of the F. A., 1894, provides that where the executor is not accountable (*i.e.*, under s. 8 (3) so far as the assets referred to there extend) then any person to whom property passes on the death beneficially and in possession, whether directly or by alienation, and also (to the extent of property actually received by him) every trustee,²⁷ guardian, committee or other person in whom any interest therein or the management thereof is vested (otherwise than as agent or bailiff) is accountable for the E.D. on such property.

This sub-section makes all beneficiaries, trustees, alienees (*etc.* as therein stated) accountable, except for E.D. on personal property of which the deceased was competent to dispose. But it will apply to real estate notwithstanding that the executor is accountable for E.D. thereon under s. 16 (1) of the Law of Property Act, 1925, and s. 73 (3) of the Land Registration Act, 1925, in view of s. 16 (4) and (5) of the former and s. 73 (11) of the latter.²⁸ In all cases in which s. 8 (4) applies (and in certain other cases) the E.D. is also a charge on the property under s. 9 (1) of the Act (see below, p. 142).²⁹

As regards beneficiaries, each is liable, where s. 8 (4) applies, for the whole E.D. on the property which passes to him for a beneficial interest in possession, even if his interest in the property is a limited interest. "Beneficiary" includes a pecuniary legatee on the death of a life-tenant not competent to dispose of the property³⁰ and a legatee whose legacy is payable out of real

²⁷ Including in Scotland a tutor, curator and judicial factor (F. A., 1894, s. 23 (13)).

²⁸ Which preserve the remedies of the Commissioners against all other persons (except purchasers) and the liability of the persons beneficially interested and of their interests.

²⁹ If the beneficiary is dead the E.D. is not apportionable between his pecuniary and residuary legatees, but is payable out of his residue alone (*Re Fuchs' Will Trusts, Westminster Bank, Ltd. v. Chew*, [1944] Ch. 200; 1 All E. R. 338, so that *Berry v. Gaukroger*, below, n. 30, will not be extended to cases where a beneficiary is dead. Actually, in *Fuchs' Case*, the duty was that in the dead reversioner's estate in respect of his reversion, postponed under s. 7 (6), to which s. 8 (3) and not s. 8 (4) applied).

³⁰ *Berry v. Gaukroger*, [1903] 2 Ch. 116, C. A.

estate³¹ (in both of which cases the executor is not accountable). In such cases the E.D. is apportioned between the beneficiaries, but this follows from the charge of E.D. imposed on the property (as to which see below, p. 141).

As to trustees, s. 8 (4) does not apply to a bare trustee. Nor is an active trustee liable for E.D. on a death after his retirement and transfer of the property to new trustees, but he remains liable after retirement for E.D. previously due and the new trustee is also accountable for any duty unpaid at his appointment. It is immaterial that a trustee may have parted with the property at the date of the demand for the duty, if the property was once within his control within the meaning of s. 8 (4). Where both beneficiaries and trustees are accountable for duty on one particular property it is usual to call upon the trustees in the first instance to render the account for the duty.

As to E.D. payable under s. 43 of the F. A., 1940, s. 44 of the F. A., 1950, makes the trustees of the settlement at the deceased's death accountable, to the extent of the property then subject to the settlement, or, if the settlement is not then in existence, its last trustees. This provision applies to deaths after April 18, 1950, and is in addition to the accountability of any other person under other provisions.

By s. 16 (2) of the Law of Property Act, 1925, where land does not devolve on the personal representative the estate owner³² (other than a purchaser acquiring a legal estate after the charge for duties has attached and free from such charge) is accountable for all duties which become payable in respect of his estate in the land or any interest therein capable of being overreached by his conveyance to a purchaser under the Settled Land Act, 1925, or pursuant to a trust for sale; while by s. 73 (4) of the Land Registration Act, 1925, in such cases the registered proprietor (other than a purchaser acquiring a registered estate free from the charge for duties) is similarly accountable for duties in respect of that estate or any minor

³¹ *Re Spencer Cooper, Poe v. Spencer Cooper*, [1908] 1 Ch. 130; *Re Owers, Public Trustee v. Death*, [1941] Ch. 17; [1940] 4 All E. R. 225. As to the order in which assets are to be applied, as affecting the question how far legacies are in fact payable out of realty, see *Re Thompson, Public Trustee v. Husband*, [1936] Ch. 676; 2 All E. R. 141; *Re Anstead, Gurney v. Anstead*, [1943] Ch. 161; 1 All E. R. 522.

³² *I.e.*, the owner of the legal estate other than an infant (Law of Property Act, 1925, s. 205 (1) (v)).

interest capable of being overridden by his registered disposition. In most cases the estate owner or registered proprietor will also be a trustee or beneficiary or alienee and as such will be liable independently as stated above.³³ Such cases will include (1) where the deceased was entitled to an annuity or jointure charged on land; (2) where land is settled on the deceased and another for their joint lives, with remainder to the survivor for life, the survivor being the estate owner; (3) where the deceased was entitled to a share of land for life, or land was settled on trust to sell and proceeds to him for life, when the statutory trustees for sale are the estate owners. Cases falling exclusively under s. 16 (2) are those of personal property, being interests in land, not within s. 8 (1) or 8 (4) of the F. A., 1894.

Accountability for E.D. on *land of which the deceased was life-tenant* depends on a variety of factors. (a) If the land was vested in the deceased his representatives are accountable under s. 16 (1) of the Law of Property Act, 1925 (see above, p. 132). Such representatives may be either his general or his special representatives, according to whether the land ceased to be settled (within the meaning of s. 1 of the Settled Land Act, 1925) at his death or not; (i) if it so ceased (which is the case, for example, if the land then passed to a person, not being an infant, absolutely entitled, and freed from any charge or power to charge,³⁵ or if a trust for sale, whether statutory or otherwise,³⁶ then came into operation, even if the proceeds remained settled) his general representatives are accountable under s. 16 (1). The trustees will not be accountable (even under s. 8 (4) of the F. A., 1894, unless they have "received and disposed of" the property, as would be the case where there was a trust for

³³ See p. 134.

³⁵ Unless the charge is overridden, *e.g.*, if on the deceased life-tenant's death the land passed, subject to equitable charges, to tenants in common, when the statutory trust for sale imposed by s. 34 of the Law of Property Act, 1925, would override the charges so that the land would cease to be settled (*Re Ryder and Steadman's Contract*, [1927] 2 Ch. 62). A non-statutory trust for sale will not normally override charges such as jointures and portions (*Re Norton, Pinney v. Beauchamp*, [1929] 1 Ch. 84: but see *Re Leigh's Settled Estate*, [1927] 2 Ch. 13).

³⁶ *E.g.*, where the land devolves on the deceased's death to persons entitled in undivided shares (Law of Property Act, 1925, ss. 34, 35), except where they are entitled as joint tenants but the land remains settled, *e.g.*, because of some charge, so that the trust for sale imposed by s. 36 of the Act does not operate (*Re Gaul and Houlston's Contract*, [1928] Ch. 689), when the joint tenants are accountable as estate owners under s. 16 (2) of the Act.

sale); (ii) if the land remained settled after his death (as where limitations or a charge³⁵ on the land continued to subsist, or where there is a compound settlement, or where the deceased was tenant in tail and had not disposed of his interest by will) his special representatives, *i.e.*, the trustees of the settlement, are accountable under s. 16 (1), and they may obtain a settled land grant under s. 22 (1) of the Administration of Estates Act, 1925, or s. 9 of the Administration of Justice Act, 1928. They are also accountable under s. 8 (4) of the F. A., 1894. The general executor, however, is accountable for the duty on all land, settled or unsettled, included in a general grant to him which does not exclude settled land, until such grant is revoked, which it must be before a subsequent grant limited to settled land is obtained; (b) if the land was not vested in the deceased life-tenant the trustees are accountable under s. 16 (2) of the Law of Property Act, 1925 (see preceding paragraph) and s. 8 (4) of the F. A., 1894, whether the land remains settled or not. In all these cases the beneficiary is also accountable under s. 8 (4),³⁷ as he is of course (and also under s. 16 (2)) where he is surviving joint tenant with the deceased.

In addition to liability under the above-mentioned provisions, s. 39 of the Customs and Inland Revenue Act, 1881, which is incorporated with the other Crown remedies by s. 8 (1) of the F. A., 1894, renders accountable any person who as beneficiary, trustee or otherwise acquires possession or assumes the management of any personal or moveable property liable to E.D. under s. 2 (1) (c) of the latter Act. This makes liable beneficiaries, trustees, etc., in cases to which s. 8 (4) has no application, *e.g.*, for E.D. on a share of joint investments provided by the deceased or personal property settled by him with a power of revocation or of general appointment thereover.

3. *Crown Debtors*

It should be noted that every person made accountable for duty as above is a debtor to the Crown for such duty.³⁸ Should the duty be unpaid at his death it can be recovered from his representatives. If his estate is insufficient to satisfy all his

³⁷ And see Law of Property Act, 1925, s. 16 (5).

³⁸ Cf. *Berry v. Gaukroger*, [1903] 2 Ch. 116, at pp. 130-1.

debts the Crown has no priority where the death occurred after 1925.³⁹ The provisions of s. 27 of the Trustee Act, 1925, for the protection of trustees or personal representatives by means of advertisements bind the Crown (*ib.*, s. 71 (4)), but do not extend to claims of which they then had notice. They are of course presumed to have had notice of all claims for duty in respect of the trust with which they are dealing.

The Crown's claims are not affected by the Statutes of Limitation⁴⁰ or by delay in notifying claims for duty or by the mistake of its officers in not making a claim or in charging too little duty.⁴¹ Its right against persons other than purchasers (as to whom see below, p. 144) can only be defeated on the ground of lapse of time in the following circumstances:—

(1) Under s. 13 of the Customs and Inland Revenue Act, 1889, incorporated by s. 8 (2) of the F. A., 1894, which provides that no person shall be liable for any duty under a document,⁴² an attested copy of which is deposited with the Commissioners after six years from notice of the fact giving rise to an immediate claim to such duty.

(2) Under s. 14 of the same Act, similarly incorporated, which provides that no person shall be liable under any testamentary document admitted to probate, or under any letters of administration, or under any confirmation after six years from the settlement of a full and true account, containing all material facts for ascertaining the rate and amount of duty. The account is not “settled” until the time for payment of the duty,⁴³ but

³⁹ Administration of Estates Act, 1925, ss. 34 and 57, before which the Crown was entitled to priority over debts of equal rank, except as to heritable estate in Scotland.

⁴⁰ *Att.-Gen. (Ir.) v. Lordan* (1906), 40 Ir. L. T. 98; Limitation Act, 1939, s. 30 (which, however, does not apply to Scotland).

⁴¹ See, e.g., *Ld. Adv. v. Meiklam* (1860), 22 Dunlop 1427; *Ld. Adv. v. Pringle* (1878), 2 Rett. 912; 15 S. L. R. 624; *Hamilton (Duke) v. Ld. Adv.* (1892), 30 S. L. R. 138, H. L.; *Ld. Adv. v. Taylor (Miller's Trustees)* (1884), 11 Rett. 1046; 21 S. L. R. 709, where Lord Fraser said at 21 S. L. R. 712, col. 1: “It is the privilege of the Crown not to be bound by the omissions, neglects and blunders of their [*sic*] officers”.

⁴² Other than a testamentary document admitted to probate. Such copy is exempt from stamp duty and an official receipt is given. The notice must be given on forms “Eng. No. 21” for E.D., “Eng. No. 23” for S.D., and in Scotland on form “S” for both duties, each in duplicate. “Duty under such document” is not a happy phrase and should apparently be read as “duty on any property passing or acquired under such document”.

⁴³ F. A., 1894, s. 8 (2). In *Re Stopford's Estate*, [1938] Ir. R. 450, it was held that an account marked “provisional assessment” was not “settled” within this subsection.

“settlement” does not involve actual payment, though it does involve actual delivery of an account⁴⁴; an Inland Revenue affidavit or inventory is an account as to the property in respect of which E.D. was paid on it. In the case of instalments the section applies separately to each instalment.

(3) Under s. 8 (11) of the F. A., 1894, the Commissioners *may* remit any E.D.⁴⁵ or interest thereon remaining unpaid at the expiration of twenty years from the death upon which it became leviable.

4. Companies

By s. 54 (1) of the F. A., 1940, the following persons are accountable for the E.D. payable under s. 46⁴⁶ of that Act: (a) the company; (b) any person (other than a *bona fide* purchaser for full consideration in money's worth received by the company for its own use and benefit) who receives or disposes of any assets which the company had at the death or thereafter, but not for duty in excess of such assets; (c) any person (whether surviving the deceased or not) who received any distributed assets of the company on their distribution.⁴⁷

By s. 54 (2) every member (at the deceased's death) of a company, incorporated outside the United Kingdom and accountable under s. 54 (1) or (2), is also accountable for a rateable part of the duty in proportion to his interest in the company.

By s. 54 (3) all persons accountable under this section have the powers conferred by the F. A., 1894, for raising and paying E.D.

By s. 54 (4) the Companies Act, 1929, ss. 78 and 264 (1), shall have effect on the winding-up of a company as if s. 264 (1) (a) contained a reference to any duty payable under s. 46 of the F. A., 1940.

By s. 54 (5) the E.D. payable under s. 46 shall be a first charge by way of floating security on the company's assets⁴⁸

⁴⁴ *Att.-Gen. v. Montefiore* (1909), 52 Ir. R. Rep. 85.

⁴⁵ Extended by s. 13 of the F. A., 1907, to L.D., S.D., and other duties now obsolete.

⁴⁶ See p. 47, above.

⁴⁷ “Distributed assets” and “assets of the company passing on the death” under s. 46 here exclude any distributed assets received by the deceased.

⁴⁸ By s. 54 (9), in its application to Scotland s. 54 (5) shall have effect as if its provisions as to a charge by way of floating security on the company's assets were omitted.

as at the death or any time thereafter, and any part of the duty for which a person is accountable under s. 54 (1) (c) shall be a first charge on the distributed assets in question also; but not against a *bona fide* purchaser for valuable consideration without notice. By s. 54 (6) any duty paid by a person accountable only under s. 54 (1) (c) or raised under s. 54 (5) out of any distributed assets may be recovered by the payer, or by the person entitled subject to the charge, from any person accountable therefor otherwise than under s. 54 (1) (c); but [s. 54 (7)] no part of the duty paid by the company shall be recoverable by it from any person on the ground only that he is entitled to any interest in, or to any sum charged on, the assets of the company at the death.⁴⁹

S. 54 (8) of the F. A., 1940, prevents the operation of ss. 6 (2), 8 (3) and (4), and 9 (1) of the F. A., 1894, as regards E.D. payable under s. 46 of the F. A., 1940, the accountability for and incidence of which are determined solely by reference to s. 54 of the last-mentioned Act, though it incorporates for its own purpose the powers given to accountable parties by the F. A., 1894, for raising and paying the duty.

It should be noted that although the company's primary accountability for E.D. payable under s. 46 of the F. A., 1940, has not been altered, s. 38 (2) (b) of the F. A., 1944, by reducing the extent of the property liable under s. 46 by the value of the deceased's interest in shares or debentures, had the effect of restoring to executors, trustees, etc., their normal accountability for duty on shares or debentures passing as part of the free estate or under other titles—a liability which under s. 51 of the F. A., 1940, they might have escaped.

S. 53 (1) of the F. A., 1940, requires the company and its officers⁵⁰ to notify the Commissioners within a month of the deceased's death of that death, of the transfer of property by him to the company and of benefits received by him. In default, s. 53 (2) imposes penalties. S. 57 (1) applies s. 8 (5) of the

⁴⁹ The object here is to preserve the priority of the debentures and preference shares.

⁵⁰ Defined in s. 59 of the Act as "any person who exercises the functions of a director, manager, secretary or liquidator of the company".

F. A., 1894,⁵¹ to any company to which ss. 46 and 55⁵² of the first-mentioned Act apply and to every officer or auditor thereof, and subsections 2 and 3 supply machinery for enforcing this.

Where E.D. is payable in respect of property transferred to a company under s. 34 of the F. A., 1930,⁵³ or in respect of settled property so transferred under s. 35 thereof,⁵⁴ the company is by s. 36 solely accountable.

5. Charge on Property

S. 9 (1) of the F. A., 1894, provides that a rateable part of the E. D. on every estate proportionate to the value of the property not passing to the executor as such shall be a first charge on such property; but not against a *bona fide* purchaser thereof for valuable consideration without notice. "Duty" here includes interest.⁵⁵

It has been said that "The true function of s. 9 is to apportion the burden as between the various items of property on which the whole duty is payable by freeing the property which passes to the executor as such and charging the property which does not", and that the words "as such" are "equivalent either to the phrase '*qua executor*' or '*virtute officii*'".⁵⁶ "Executor as such" in s. 9 (1) is less wide than "as executor" in s. 8 (3)⁵⁷; it does not cover property appointed by his testator under a general power⁵⁸ or vesting in the executor under the Land Transfer Act, 1897, or the Administration of Estates Act, 1925, but includes only the deceased's free personal estate in Great Britain. E.D. in respect of this latter is accordingly not a charge on the property, but is a testamentary expense, as stated above (p. 133). E.D. on all other property is a charge on such property under s. 9 (1), and this charge is wider than the liability of persons other than the executor under s. 8 (4), for it extends also to property for which

⁵¹ See above, p. 120.

⁵² See above, p. 102.

⁵³ See above, p. 47.

⁵⁴ See above, p. 43.

⁵⁵ F. A., 1896, s. 18 (1).

⁵⁶ *Per* Lord Buckmaster, L.C., in *O'Grady v. Wilmot*, [1916] 2 A. C. 231, at p. 257.

⁵⁷ *Ibid.*, *per* Lord Sumner at p. 273.

⁵⁸ *O'Grady v. Wilmot*, [1916] 2 A. C. 231; *a fortiori* where such power is not exercised (*Porte v. Williams*, [1911] 1 Ch. 188).

the executor is accountable under s. 8 (3) as personal property of which the deceased was competent to dispose at his death but which does not pass to the executor as such (see above, p. 130). The charge under s. 9 (1) extends to all real estate passing on the death,⁵⁹ notwithstanding any personal accountability of the executor, and to leaseholds not forming part of the deceased's free estate. Where E.D. on the cesser of an annuity is calculated on a notional capital to produce an annuity, it is a charge on the whole property on which the annuity is charged.⁶⁰

Once a charge for duty has attached under s. 9 (1) it is not destroyed, whether registered or not, by any subsequent dealings with, or devolution of, the property, except where a purchaser is expressly protected (see below, pp. 144-7). Where this is so because of non-registration of the charge, the proceeds of the land are charged with the duty⁶¹; where it is so because of lapse of time the charge is shifted to the remainder of the succession of the successor in question, or in the case of a mortgage to the equity of redemption.⁶²

The charge falls on the persons beneficially entitled to the property on the death in proportion to their respective interests,⁶³ whether they take absolutely or for life, or by way of an annuity, pecuniary legacy or a fixed sum under an appointment.⁶⁴ Where one of the beneficiaries is an annuitant he must

⁵⁹ *Re Palmer, Palmer v. Rose-Innes*, [1900] W. N. 9; *Re Sharman, Wright v. Sharman*, [1901] 2 Ch. 280; *Re Morris, Skinner v. Sanders*, [1927] W. N. 146; *Re Anstead, Gurney v. Anstead*, [1943] Ch. 161. If, as appears to be the case, the deceased's free realty in England and Wales now passes to the executor as such, the charge under s. 9 (1) is preserved by s. 5 of the Land Transfer Act, 1897, s. 53 (3) of the Administration of Estates Act, 1925, s. 16 (4) and (5) of the Law of Property Act, 1925, and s. 73 (11) of the Land Registration Act, 1925.

⁶⁰ *Re Palmer, Palmer v. Palmer*, [1916] 2 Ch. 391. In the converse case of E.D. in respect of a fund less the "slice" for an outstanding annuity it was held, somewhat inconsistently, in *Re Tattersall's Settlement, Public Trustee v. Tattersall*, [1918] 2 Ch. 243, that the annuity slice was not charged with any part of the duty.

⁶¹ Law of Property Act, 1925, s. 17 (2); Land Registration Act, 1925, s. 73 (5).

⁶² Customs and Inland Revenue Act, 1889, s. 12 (2), incorporated by the F. A., 1894, s. 8 (2); and see below, p. 145.

⁶³ *Per North, J.*, in *Re Orford (Countess), Cartwright v. Del Balzo (Duc)*, [1896] 1 Ch. 257, at p. 263. Where the deceased had an interest only in a share of the fund the charge for E.D. on his death does not extend beyond his own share (*Betts Brown's Trustees v. Whately Smith*, 1941, S. C. 69).

⁶⁴ *Berry v. Gaukroger*, [1903] 2 Ch. 116, C. A.; *Re Hicklin, Public Trustee v. Hoare*, [1917] 2 Ch. 278.

be treated as life-tenant of a sum equal to the capitalised value of his annuity and must during his life suffer interest, at the rate at which the duty could be raised by mortgage, on the duty attributable to such value.⁶⁵ Where the beneficiary is a life-tenant he must keep down the interest on the E.D. which is itself a charge on the capital of the estate.⁶⁶ So, in Scotland, must an heir of entail.⁶⁷ Where the property charged with E.D. is only a limited interest, *e.g.*, an annuity, the duty is payable out of such interest.⁶⁸

6. Reimbursement

S. 9 (4) of the F. A., 1894, provides that the rateable part of the E.D. on any property which has been paid by the executor shall, where occasion requires (*i.e.*, where it is a charge on the property) be repaid to him by the trustees or owners of the property, but as to duty on real estate by the same instalments as are permitted by s. 6 (8), unless otherwise agreed.

Notwithstanding any accountability for E.D. in respect of land under the Acts of 1925, the persons beneficially interested remain liable, and by s. 16 (5) of the Law of Property Act, 1925, must pay the duty and interest and costs to the Commissioners or to the other accountable person who may have paid them in the first place, as the case may be. This is so notwithstanding any assent or conveyance by a personal representative, except to a purchaser of the legal estate.⁶⁹

S. 9 (6) of the F. A., 1894, gives a person having a limited interest in property and paying the E.D. thereon the like charge as if such duty had been raised by mortgage to him. Such persons

⁶⁵ *Re Parker-Jervis, Salt v. Locker*, [1898] 2 Ch. 643. Where the property is of a wasting nature, or is largely reversionary, special provision has to be made to prevent an unfair charge on either remainderman or annuitant (*cf. Re Portman (Viscount), Portman v. Portman (Viscount)*, [1924] 2 Ch. 6).

⁶⁶ *Re Howe's (Earl) Settled Estates, Howe (Earl) v. Kingscote*, [1903] 2 Ch. 69.

⁶⁷ *Robertson, Petitioner*, 1914, 1 S. L. T. 492.

⁶⁸ *Cf. Re Cassel, Public Trustee v. Mountbatten*, [1927] 2 Ch. 275. If there are trustees they may also be accountable.

⁶⁹ Administration of Estates, Act, 1925, s. 36 (9). In such a case the personal representative may require security for the discharge of any duties, but shall not postpone an assent merely by reason of the subsistence of such duties if reasonable arrangements have been made for discharging same (*ibid.* s. 36 (10)); in the case of settled land he is to be satisfied that provision has been made or will be made for payment of unpaid duties or to be indemnified (Settled Land Act, 1925, s. 8; Land Registration Act, 1925, s. 87).

include not only a life-tenant but a tenant in tail in England⁷⁰ and an heir of entail in Scotland.⁷¹ A charge under this section may be registered as a land charge, and if not registered before completion of the purchase will be void as against a purchaser.⁷²

S. 14 (1) of the F. A., 1894, entitles a person authorised or required to pay E.D. on property which does not pass to the executor as such, and actually paying it, to recover the rateable part thereof from any person entitled to any sum charged on such property under a disposition not expressly providing the contrary. S. 14 (3) provides that the person from whom such recovery may be obtained shall be bound by the accounts and valuations settled between the payer and the Commissioners. These provisions are statutory directions for apportionment of duty in certain cases, but as stated above (p. 142) E.D. which is a charge on property is in all cases apportionable between the beneficiaries according to their interests. Where a debt or incumbrance, not deductible under s. 7 (1) of the F. A., 1894, is secured on the deceased's free realty or on his personalty situate out of Great Britain, a rateable part of the E.D. in respect thereof is recoverable by the executor under s. 14 (1) from the person entitled to the charge.⁷³

By s. 18 (1) of the Law of Property Act, 1925, death duties in respect of land may be paid out of capital money settled in the same way and duties on land held on trust for sale out of personalty held on the same trusts, by direction of the life-tenant, statutory owner or trustee for sale who is accountable. By s. 18 (2) where any such duties would not otherwise be payable out of such capital money or personalty, the amount so paid shall be repaid to the trustees by the person liable by the same instalments and at the same interest applicable to such duties, and the interest of such person is charged with such repayment.

7. Purchasers

A purchaser of an estate may be accountable for E.D. as a person in whom the property is vested in possession by alienation under s. 8 (4) of the F. A., 1894, or as an estate owner or registered proprietor (see above, pp. 134-5), and may also take the

⁷⁰ *Re Anson, Buller v. Anson*, [1915] 1 Ch. 52.

⁷¹ *Ld. Adv. v. Moray (Countess)*, [1905] A. C. 531.

⁷² Land Charges Act, 1925, ss. 10 (1) and 13 (2).

⁷³ *Alexander's Trustees v. Alexander's Marriage Contract Trustees*, 1910 S. C. 637.

property subject to a charge for E.D. As such charge is wider in its application than the personal accountability, a purchaser taking free of all charge for E.D. is in practice treated as exempt from any other liability.

Normally a purchaser is entitled to have the property conveyed to him free from the charge for duty.⁷⁴ It is often advisable to inquire from the Estate Duty Office whether there is any claim which will affect a purchaser.

In many cases, however, a purchaser is exempt from duty which would attach in the case of a voluntary conveyance:—

(1) Where land is subject to a trust (and not a mere power, unless exercised before the death) for sale both before and after the death of the deceased or has been sold under the power in the Settled Land Act, the charge for E.D. upon the death of the deceased shifts to the proceeds, even if the sale is after the death.

(2) By s. 12 (1) of the Customs and Inland Revenue Act, 1889, incorporated by s. 8 (2) of the F. A., 1894, real property⁷⁵ or any estate or interest therein shall not, as against a purchaser for valuable consideration⁷⁶ or a mortgagee, remain charged with E. or S.D. after six years from notice to the Commissioners that the successor or any person in his right has become entitled in possession to his succession or to receipt of the income, or after twelve years from the event which gave rise to an immediate claim for duty. In such cases the duty is by s. 12 (2) payable by the successor or other persons accountable (under s. 44 of the S. D. A., 1853) other than the purchaser or mortgagee. Notice to the Commissioners under this provision should be given on form “Eng. No. 21” (in England) and “S” (in Scotland), in each case in duplicate.

(3) S. 8 (18) of the F. A., 1894, provides that nothing in s. 8⁷⁷ shall render liable or accountable a *bona fide* purchaser

⁷⁴ This does not apply to the purchaser of an interest in expectancy, where the purchase is in its nature (apart from special arrangement) of the interest subject to all liabilities. For statutory provisions in favour of purchasers of such interests see above, p. 73ff.

⁷⁵ Which includes leaseholds (s. 1 of the Succession Duty Act, 1853, of which Act s. 12 of the 1889 Act was an amendment).

⁷⁶ This includes marriage (*Re Donelan's Estate*, [1902] 1 Ir. R. 109).

⁷⁷ This includes the liability under s. 8 (1) applying “the existing law and practice” relating to any death duties (above, pp. 130, 137) and s. 8 (4) as to trustees, beneficiaries, etc. (above, p. 134).

for valuable consideration ⁷⁸ without notice. Such purchasers are also, as we have seen, not affected by the charge for E.D. imposed by s. 9 (1) of the Act (above, p. 141). "Notice" here means notice of the death giving rise to the claim, and the purchaser has notice of any instrument or matter which is within, or would have come to, his knowledge if all reasonable inquiries had been made by him or his agents.⁷⁹ The purchaser is protected by this provision not only from the Crown's claim but also from a limited owner's claim under s. 9 (6) of the F. A., 1894.⁸⁰

(4) By s. 17 (1) of the Law of Property Act, 1925, where a charge ⁸¹ in respect of death duties (in respect of non-registered land ⁸²) is not registered as a land charge a purchaser of the legal estate takes free therefrom.⁸³ By s. 199 (1) of that Act, applied to the Crown's claims by s. 208 (3), a purchaser is not prejudicially affected by virtue of any instrument or matter capable of registration under the Land Charges Act, 1925, which is void or not enforceable against him by reason of non-registration thereof. A charge in favour of a limited owner for duty paid by him may also be registered under the Land Charges Act, 1925, s. 10 (1), and will be void as against a purchaser unless registered before completion of the purchase. Similarly by s. 73 (1) of the Land Registration Act, 1925, a registered disposition in favour of a purchaser ⁸⁴ vests the property in him free from death duties, even though a claim has been registered. Any such disposition as is mentioned in this paragraph causes all outstanding instalments of duty to become immediately payable. This will apparently apply also to a claim registered under the Land Charges Act, 1925. "Claims" means claims which have already arisen at the date of the disposition. If notice of a claim has

⁷⁸ This likewise includes marriage (*Morris v. Morris's Trustees*, 1904, 11 S. L. T. 793).

⁷⁹ Law of Property Act, 1925, s. 199 (1).

⁸⁰ See above, p. 143. The purchaser is only affected if he has notice that the limited owner is entitled to the charge by having paid the duty (*Morris v. Morris's Trustees*, 1904, 11 S.L.T. 793).

⁸¹ By s. 10 (1) of the Land Charges Act, 1925, a charge acquired by the Commissioners for death duties may be registered as a land charge; but by s. 13 (2) is void against a purchaser of the legal estate for money's worth unless registered before completion of the purchase.

⁸² Law of Property Act, 1925, s. 17 (5).

⁸³ Here "purchaser" means a purchaser in good faith for valuable consideration and includes a mortgagee or lessee (s. 205 (1) (xxi)).

⁸⁴ "Purchaser" here means a purchaser in good faith for money's worth (Land Registration Act, 1925, s. 73 (15)).

been entered in the register the Registrar must notify the Commissioners of the intended registration in favour of the purchaser and shall cancel the notice of the claim.⁸⁵

(5) By s. 36 (9) of the Administration of Estates Act, 1925, an assent or conveyance⁸⁶ by a personal representative shall not, *except in favour of a purchaser of a legal estate*, prejudice his right to be indemnified against any duties to which the deceased's estate would have been subject if there had been no assent, etc. "Purchaser" means a lessee, mortgagee or other person who in good faith acquires an interest in property for valuable consideration.⁸⁷

8. Appeals

S. 10 (1) of the F. A., 1894, authorises any person aggrieved by the Commissioners' decision as to the amount of duty claimed to appeal to the High Court, which shall determine the amount of duty. The appellant must first pay the duty or (if the Court allows) give security for payment thereof: in the latter case the Court may order interest at 3 per cent. to be paid by the appellant or, as regards any duty paid in excess, by the Commissioners. These provisions do not apply to appeals as to the value of real or leasehold property, as to which, see above, p. 112. The Court may order interest at 3 per cent. to be repaid on any excess duty for such period as it thinks just.

The Rules of Court applicable to appeals under s. 10 in England are "Rules of the Supreme Court (Finance Act), 1895" (S. R. & O., 1895, No. 11 (L.1)). Where the value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed £10,000 appeal may be made to the county court (or in Scotland to the Sheriff Court),⁸⁸ from which appeal lies to the Court of Appeal.⁸⁹ Under the Rules of Court the person aggrieved must within one month of notification⁹⁰ to him or his solicitor of the decision or claim of the Commissioners

⁸⁵ *Ibid.*, s. 73 (8).

⁸⁶ "Conveyance" here includes a mortgage, lease, vesting declaration or instrument, or other assurance (Administration of Estates Act, 1925, s. 55 (1) (iii) and (xviii)).

⁸⁷ *Ibid.*, s. 55 (1) (xviii).

⁸⁸ F. A., 1894, s. 23 (2).

⁸⁹ F. A., 1894, s. 10 (5); F. A., 1896, s. 22.

⁹⁰ By express mention of s. 10: the ordinary official notification of claim on a death or in subsequent correspondence is not treated as a notification for this purpose.

deliver to them a statement specifying his grounds of objection and (in questions of value) identifying the property and stating his valuation of the same; within one month thereafter they must notify him whether they maintain the claim or not; and if it is maintained the appellant may within one month thereafter proceed by petition.

S. 3 of the Administration of Justice (Miscellaneous Provisions) Act, 1933, enables any person against whom Death Duties have been claimed by the Crown, or who has reasonable grounds for believing that such claim may be made, to apply in summary manner to the High Court for determination of his liability. No rules of Court having been made pursuant to this section, procedure thereunder is by originating summons under Order LIV (A), Rule 1 (A).

It does not appear to be necessary to give a description in this work of the procedure for recovery of the duties by the Commissioners through the machinery of the Courts.

CHAPTER VI

CERTIFICATES

On payment of E.D. in full a certificate to this effect can be obtained from the Estate Duty Office by the accountable parties. In many cases statutory provision has been made for the issue of such certificates :—

(1) S. 11 (1) of the F. A., 1894, provides that the Commissioners, on being satisfied that the full E.D. has been or will be paid in respect of an estate or any part thereof, shall on request give a certificate to that effect discharging the property concerned. As this certificate discharges *the property* it is only issued where the E.D. is a charge on the property (see above, p. 141). Where the duty has not been paid in full a “ will be paid ” certificate is only given where good cause is shown and an undertaking is required from the accounting party that the full duty will be paid in due course. The form of application is No. 25 in England and Cc in Scotland, in duplicate.

(2) S. 11 (2) of the F. A., 1894, allows the Commissioners, on application within two years¹ of a death by an accountable person and on delivery by him of a full statement of all property passing on such death and of the persons entitled thereto, to “ determine ” the rate of E.D. on the property for which the applicant is accountable; and provides that on payment of duty at that rate they shall give a certificate discharging the property and the applicant. This certificate discharges the accountable party as well as the property and is accordingly given in respect of any property, whether the duty is a charge thereon or not. It is not given until it is reasonably certain that the whole of the property passing on the death has in fact been discovered. The form of application is No. 30 in England and Cd in Scotland, in duplicate. This certificate protects the accountable person from any further claim for E.D. by reason, for example, of an increase of rate by the aggregation of further property.

¹ By s. 14 of the F. A., 1907, the Commissioners may issue this certificate within this period.

By s. 11 (3) and (4) of the Act the certificates under headings (1) and (2) above do not discharge any person, other than a *bona fide* purchaser for valuable consideration without notice, if obtained by fraud or failure to disclose material facts.

(3) S. 16 (7) of the Law of Property Act, 1925, requires the Commissioners, if satisfied that a personal representative or other person has paid or will pay all death duties for which he is accountable on any land, to give a certificate to that effect discharging the land from any further claim for duty. This certificate, which only applies to deaths after 1925, and to land in England and Wales, discharges the property and like that under heading (1), which it supersedes in appropriate cases, is only given where the duty is a charge on the property. It extends to all duties and not merely to E.D. The form of application is No. 26 in duplicate.

(4) S. 9 (2) of the F. A., 1894, requires the Commissioners, on application submitting a description of any land or other property assessed to duty and of the incumbrances allowed in the assessment, to give a certificate of the E.D. paid on such property. By s. 9 (3) such certificates shall be conclusive evidence that the amount of duty named (*sic*) therein (subject to any repayment² for any reason) is a first charge on the lands, etc., after allowing for the debts and incumbrances. This certificate is confined to property on which E.D. is a charge, with which alone s. 9 deals. The form of application is No. 29 in England and Ca in Scotland, in duplicate.

(5) Under the Land Registration Rules, 1925, No. 192, on the cancellation under s. 73 (8) and (9) of the Land Registration Act, 1925, of a charge for death duties by reason of a disposition overriding such charge, provision is made for the notification required from the Commissioners to the Registrar that all duties have been satisfied or that no claim arises, in the form of a certificate that the land may be registered without notice of any liability to death duty by reason of the death of A. B. and that any such notice already registered may be cancelled. Application should be made to the Estate Duty Office on form No. 31 in duplicate.

(6) S. 8 (8) of the F. A., 1894, empowers the Commissioners

² Which is to be made to the person producing the certificate.

to certify to the accountable persons the amount of the valuation accepted by them for any property.

(7) On payment of the sum agreed on commutation or composition of duty under ss. 12 and 13 of the F. A., 1894 (see above, pp. 128-9), the Commissioners are required to give a certificate of discharge accordingly. There is no prescribed form of application.

(8) There are numerous statutory provisions for dealing with small sums owned by the deceased in Savings Certificates, savings banks, friendly societies, etc., without a grant of representation, but on production of a certificate that duty has been paid thereon or that no duty is payable. Application for such certificate should be made on Form No. 22.

In addition, non-statutory certificates are given of payment of British E.D. where the deceased died domiciled outside Great Britain. In the case of Eire the certificate is given in all cases, otherwise only on application by letter. Certificates are also given of payment of British E.D. on Dominion securities where the company is liable to Dominion duty. Accountable persons and those affected by liability to duty can also claim an assurance by letter that all claims affecting them have been met. All such non-statutory assurances are, of course, subject to the rule that the Crown is not bound by the mistakes of its officers.³

Certificates are also given where property chargeable with E.D. (and also L. or S.D.) is the subject of a suit in any Court. The Court is required by statute⁴ to provide for payment of such duty out of the property under its control, but accountable parties are not protected by any omission of the Court in this respect.⁵ Two forms of certificate are given by the Revenue; the first, on Form No. 32⁶ (with Form No. 65 of the Court), certifies that the Revenue has no objection to dealing with the funds in Court as proposed; the other, on Form No. 33⁶ (with Form No. 66 of the Court), certifies that there is no such objection, subject to payment of the duty shown in the requisition.

All such certificates are given without charge.⁷

³ See above, p. 138, n. 41.

⁴ L. D. A., 1796, s. 25; S. D. A., 1853, s. 53; F. A., 1894, s. 8 (1).

⁵ *Bryan v. Mansion* (1857), 3 Jur. (N.S.) Pt. 1, 473; *Att.-Gen. v. Chambres*, [1921] 1 K. B. 173.

⁶ Or in Scotland Cg.

⁷ F. A., 1894, s. 8 (15).

CHAPTER VII

NON-BRITISH ELEMENT IN RELATION TO
ESTATE DUTY

The law and rules relating to British Death Duties may require modification when any non-British element is present. Such elements may be considered under three main headings, according as they affect persons, property or the system of law involved.

Until the separation of Eire and Northern Ireland from the Imperial Exchequer, a single system of death duties prevailed throughout the British Isles (with unimportant exceptions as regards Ireland), exclusive of the Isle of Man and the Channel Islands. Northern Ireland became a separate entity for death duty purposes on November 22, 1921, and the Irish Free State on April 1, 1923; and it was provided that all references in earlier legislation to the United Kingdom should, in their application to any part of Great Britain other than Northern Ireland or to the Irish Free State respectively, refer to the United Kingdom exclusive of Northern Ireland and the Irish Free State respectively.¹

The chief limitation of scope as regards persons depends on domicile, which (and not nationality) is the criterion of personal law in this country and throughout most of the British Empire. The law governing domicile cannot be treated here, but a few general principles may be stated as a reminder.

Domicile is not the same as residence, however long; generally it is the place or country in which a person has his permanent home, but sometimes the law may attribute to him a home in some other place. Every person must have a domicile, though he may have no real home, or several homes. Domicile is a question of locality, not of society or community.² Every person acquires a "domicile of origin" at birth, *viz.*, that

¹ With the exception (as regards Northern Ireland) of the Revenue Act, 1889, s. 19 (providing that a British grant of representation should not be necessary to establish a right to payment of moneys under a policy on the life of a person domiciled outside the United Kingdom), and the F. (No. 2) A., 1915, s. 47 (see below, p. 165).

² *Re Tootal's Trusts* (1883), 23 Ch. D. 532; *Abd-ul-Messih v. Farra* (1888), 13 App. Cas. 431, P. C.

of his father, except that a posthumous or illegitimate child (not legitimated *per subsequens matrimonium*) takes his mother's domicile and a foundling a domicile in the place where found. The domicile of origin may be abandoned and a "domicile of choice" acquired by a person not under disability (*e.g.*, infancy, lunacy, or in the case of a woman, marriage), but for this there is required (1) *factum*, or actual residence in another country, and (2) *animus manendi*, or intention to make that country a permanent home. But every presumption is to be made in favour of the domicile of origin, which is retained until there is clear intention to abandon it. A statement of intention in regard to acts is not necessarily conclusive, though it may be valuable evidence, but a statement of intention as to the legal consequences of acts is irrelevant.³ On abandonment of a domicile of choice (which may be proved by evidence less strong than that required for abandonment of a domicile of origin) the domicile of origin, which has been merely in abeyance, revives unless a new domicile of choice is acquired.

A married woman acquires the domicile of her husband (matrimonial domicile) on marriage and her domicile follows his throughout the marriage, so long as it continues. The domicile of a minor follows that of his father; a widowed mother has power to change her infant child's domicile for his benefit, but she may abstain from exercising this even if she changes her own domicile.

As regards the locality of property the following principles are important:—

Locality for the purposes of British Death Duties is determinable according to English or Scottish law, even if some relevant foreign law gives another locality.⁴

Chattels and similar property are situate where found, even if vested in non-British trustees.⁵

Ships, or shares therein, registered in Great Britain and

³ A man's domicile may be different from that asserted by him in his will (*Re Steer* (1858), 3 H. & N. 594; *Re Annesley, Davidson v. Annesley*, [1926] Ch. 692; *Re Liddell, Grainger's Will Trusts*, [1936] 3 All E. R. 173).

⁴ Subject to the special rules contained in the various conventions for avoidance of double taxation (above, p. 87).

⁵ *Re Haig, Harris v. Drayton*, [1922] C. A. (not reported); 66 I. R. Rep. 16.

forming part of a deceased person's free estate, are British property for the purpose of E.D.⁶

Partnership assets are situate where the business is carried on.⁷ If one firm carries on several businesses in different countries, treated as distinct in the partnership agreement, each business is situate where it is carried on.⁸ Goodwill of a business is situate where the business is.⁹ An English trade-mark is property situate in England.¹⁰ A patent, or share therein, or a licence to work the same, is situate where the right can be operated.¹¹

Simple contract debts are situate where the debtor resides, as they are recoverable there; this is so even if the document evidencing the debt is elsewhere (*e.g.*, in the case of bills of exchange and promissory notes¹²); but if an instrument is created of a chattel nature, capable of negotiation and sale in Great Britain, it is situate here, even if due from a person abroad.¹³ A judgment debt is situate where the judgment is recorded.¹²

As regards shares or stock in a company, if registered they are situate where the register is.¹³ In the case, common in Canada and U.S.A., of certificates transferable by delivery when signed by the registered holder on the printed form of transfer and/or power of attorney, the transferee's name being left blank, these are situate where found, if the beneficial owner is other than the registered holder¹⁴; but where the registered holder is the beneficial owner or his nominee they are situate where the register is kept.¹⁵ Shares of a British company registered on a Dominion or Colonial register are situate where

⁶ Revenue (No. 2) Act, 1864, s. 4, incorporated by s. 26 (3) of the Customs and Inland Revenue Act, 1881, and s. 8 (1) of the F. A., 1894.

⁷ *Laidlay v. Ld. Adv.* (1890), 15 App. Cas. 468.

⁸ *Beaver v. Master in Equity*, [1895] A. C. 251, P. C.

⁹ *I. R. Commrs. v. Muller*, [1901] A. C. 217.

¹⁰ *Lecouturier v. Rey*, [1910] A. C. 262.

¹¹ *English, Scottish and Australian Bank, Ltd. v. I. R. Commrs.*, [1932] A. C. 238.

¹² *Att.-Gen. v. Bouwens* (1838), 4 M. & W. 171.

¹³ *Att.-Gen. v. Higgins* (1857), 2 H. & N. 339.

¹⁴ *Stern v. The Queen*, [1896] 1 Q. B. 211.

¹⁵ If there are two registers the location of the certificates is decisive (*R. v. Williams*, [1942] A. C. 541), as, in cases of apparent dual locality, appeal must be made to some third factor (see, as to securities not indorsed in blank, *Treasurer of Ontario v. Aberdeen*; *Treasurer of Ontario v. Blonde* [1947] A. C. 24).

the register is kept. Many Dominion companies keep duplicate registers, any one of which can be used to register a transfer of shares. If one of the registers is in Great Britain and the certificates are also here at the death of the owner, the shares are considered to be situate here, irrespective of the owner's domicile.¹⁶ If shares are transferable only on a branch register, they are situate where such register is.¹⁷ If they are registered on a branch register in Great Britain and can be legally transferred here they are British assets¹⁸; but if, although there is a branch register, transfers can be made only at the head office (whether on the head register or the duplicate kept there of the branch register) they are situate in the country of the head office.

Specialty debts are situate, according to English law, where the specialty is "conspicuous", *i.e.*, where it is physically situate, and this applies even if the specialty is not under seal, *e.g.*, if it is a Crown debt or due by force of a statute, provided the obligation is constituted by the document.¹⁹ It does not apply to Scotland, as the distinction between specialty and simple contract debts is unknown to Scots law, under which all debts are situate where the debtor resides. S. 39 of the Revenue Act, 1862, enacted that for the purpose of stamp duties on probates and letters of administration specialty debts owing from persons in the United Kingdom to the deceased should be British assets as if simple contract debts, but it has been held²⁰ that this section had nothing to do with E.D. Consequently specialty debts owing by a person, company, etc., in England are situate where the specialty is found, and if by a person, etc., resident in Scotland, are Scottish assets, with the exception that a Scottish instrument under seal found in Ireland is an Irish asset, as by the Relief in respect of Double Taxation [Irish Free State] Declaration, 1923,

¹⁶ *Re Clark, McKechnie v. Clark*, [1904] 1 Ch. 294. See above, p. 120. as to deduction of dominion death duty in such cases.

¹⁷ *Brassard v. Smith*, [1925] A. C. 371, P. C.

¹⁸ As in the case of certain companies incorporated in Nova Scotia (as regards shares in the name of a trustee, etc., other than the deceased) and British Columbia (as to certain companies whose business is principally carried on outside Canada, where the deceased owner was not ordinarily resident in the province).

¹⁹ *Royal Trust Co. v. Att.-Gen. for Alberta*, [1930] A. C. 144, P. C. This does not therefore apply to inscribed or registered stocks, only to bonds. If there are duplicate deeds, of equal value as evidence of title, situate in different places, regard must be had to the other circumstances of the case (*Toronto General Trusts Corp. v. The King*, [1919] A. C. 679, P. C.).

²⁰ *Re Finance Act, 1894, and Deane*, [1936] Ir. R. 556.

Part II, par. (c), for the purpose of relief in such cases the locality of the asset is to be determined by the laws in force in England and Ireland on December 6, 1922 (when Ireland was part of the United Kingdom). This is followed for all purposes and not merely for relief from dual taxation, and is extended to Northern Ireland by concession (see above, p. 86, n. 26).

Bearer bonds, which pass by delivery, are British assets if found in Great Britain.²¹ The principle *mobilia sequuntur personam* does not apply to E.D.²² Two-and-a-half per cent. National Defence Bonds, 1944-8, whether bearer or registered, are situate where the bonds are found, but 2½ per cent. National War Bonds, 1945-7, 1946-8, 1949-51 and 1952-54, and 3 per cent. Savings Bonds, 1955-65, are really stock and are situate where registered (*i.e.*, either at the Bank of England or the Bank of Ireland, Belfast). Three per cent. Defence Bonds, and 2½ per cent. Defence Bonds, 1946, the owner of which dies domiciled outside Great Britain, are not treated as situate here if the bond book is outside Great Britain.

In the case of Eire Land Bonds, issued in exchange for land taken over by the Land Commission on an "appointed day", conversion takes effect on the "appointed day"; what the former landowner possesses is land until the "appointed day", thereafter until issue of the bonds personal estate to be satisfied by the issue of the bonds, and thereafter the bonds, which are Eire movable property. In the case of Northern Irish Land Bonds a former landowner owns land up to the "appointed day", then personalty in Northern Ireland up to the date of bringing the bonds to his credit at the Bank of England, then a right to bonds in specie (which is English personalty) until actual allocation, and thereafter the bonds themselves, which are situate where found.

Money in a bank is situate at the branch where it is deposited if the obligation to pay is primarily confined to that branch.²³ Shares and deposits in a building society, if repayable at a particular branch (not a mere agency) are situate there; otherwise at the head office of the society.

Trustee savings bank deposits of a person who dies domiciled in the Channel Islands or Isle of Man, also Savings Certificates

²¹ *Att.-Gen. v. Bouwens* (1888), 4 M. & W. 171; *Winans v. Att.-Gen.*, [1910] A. C. 27.

²² *Winans v. Att.-Gen.*, [1910] A. C. 27, *per* Lord Atkinson, at p. 34.

²³ *R. v. Lovitt*, [1912] A. C. 212, P. C.

and Post Office Savings Bank deposits of such, are situate out of Great Britain.²⁴ Savings Certificates and Post Office Savings Bank deposits of a person domiciled in Northern Ireland are not treated as liable to British E.D. But stock on the Post Office Savings Bank register is a British asset; that on a Trustee Savings Bank register is situate where the register is.

Repayments of United Kingdom income tax and surtax of a person resident in Great Britain or Northern Ireland are situate in the country of residence; if such person is resident in both countries, his domicile determines the locality for the purpose of death duties. Arrears of naval, military, air force and civil pay payable out of British Imperial funds are British assets, unless the deceased owner was domiciled in Northern Ireland, when they are Northern Irish assets, and unless any part thereof is chargeable against the Northern Irish Government, when such part (or the whole, as the case may be) is Northern Irish assets.

Policies of life assurance present special difficulties. If the policy is under hand (and also, in the case of Scottish policies, if under seal, unless situate in Ireland, see above, p. 155) the policy moneys are situate where the head office of the company is, unless under the terms of the policy payment is to be made at some other place, when the moneys are situate at the place of payment.²⁵ If the policy was issued by a branch office (not a mere agency) abroad of a British company, without special provision as to place of payment, the moneys are situate at the branch office, provided that the whole course of business with reference to the policy has been transacted there. Where payment can under the terms of the policy be made either at the head office or at a branch in another country, the moneys are in general not treated as localised in the latter country. It may be mentioned that certain Scottish companies have special rules as to payment; each such case must be considered on its merits. In the case of an English policy under seal the moneys are situate where the policy is found.

In the case of equitable interests it should be borne in mind that a residuary legatee or person entitled under an intestacy, who dies while the estate of the testator or intestate is still under

²⁴ Trustee Savings Bank Regulations, 1929, Nos. 35-7; F. A., 1931, s. 41; Post Savings Bank Regulations, 1921, Nos. 95-7.

²⁵ *New York Life Assurance Co. v. Public Trustee*, [1924] 2 Ch. 101, C. A.

administration, is entitled not to the assets, or a share thereof, in specie, but to receive from the executor or administrator the clear residue, or a share thereof, on completion of administration. His interest is accordingly situate in the country where the administration is effected.²⁶ This principle applies *inter alia* to interests in expectancy. Thus if a person entitled to a reversion under a British trust dies domiciled abroad leaving his estate to another who also dies domiciled abroad, the reversion will be liable to E.D. in the estate of the former, since it will be a British asset thereof: but it will not be liable in the estate of his legatee, since it will be recoverable by the latter's representative from the foreign representative of the former.²⁷ Similarly the interest of a deceased reversioner to proceeds of sale of non-British realty or immovables subject to an outstanding British trust with British trustees is a British asset,²⁸ whether the property has been sold or not and even if the reversioner was entitled to the whole of the proceeds and not merely a share. This is so even if there is power to postpone the sale or if it can only be effected with the life-tenant's consent; but not if there is merely a power to sell, not exercised. But the fact that property stands in the name of a bare trustee or nominee or mortgagee does not affect its locality if the beneficial owner was entitled to it in specie.²⁹ The *Sudeley* principle does not apply to administered estates, or where the beneficiary is entitled to call for transfer of the assets themselves.³⁰

²⁶ *Sudeley (Lord) v. Att.-Gen.*, [1897] A. C. 11. In the unusual case where the executor or administrator is resident in one country and the law governing the trust is that of another country it appears that the former is the deciding factor. (*Ibid.*, per Lord Halsbury at p. 16; *Commr. of Stamps v. Hope*, [1891] A. C. at p. 481; *New York Life Insurance Co. v. Public Trustee*, [1924] 2 Ch. 101, per Pollock, M.R., at p. 109.)

²⁷ Unless the only grant to the estate of the first reversioner was obtained in this country (*Partington v. Att.-Gen.* (1869), L. R. 4 E. & I. App. 100). Where, in such cases, the second deceased dies before a grant of representation is obtained to the first, the locality of the asset in the second estate may depend on who in fact obtains such grant.

²⁸ *Re Smyth, Leach v. Leach*, [1898] 1 Ch. 89.

²⁹ *Re Ferguson*, [1935] Ir. R. 21; *Re Figgis* (1935), 69 Ir. L. T. 30; *Att.-Gen. v. National Provincial Bank, Ltd.* (1925), 44 T. L. R. 701.

³⁰ As to which see, *inter alia*, *Re Marshall, Marshall v. Marshall*, [1914] 1 Ch. 192, C. A.; *Re Sandeman's Will Trusts, Sandeman v. Hague*, [1937] 1 All E. R. 368.

The following agreements have been made with the authorities in Northern Ireland and Eire as to duty on interests of the nature just mentioned :—

(a) Duty on personal property (other than leaseholds not held on trust for sale), including reversionary interests, forming part of the estates of persons domiciled in one of the three fiscal areas and dying before April 1, 1922, where Eire, or before November 22, 1921, where Northern Ireland, is concerned will be taken, as between Great Britain and Eire, in the country where normal collection would have taken place but for the separation and, as between Great Britain and Northern Ireland, in the country of the domicile. Where the interest is in immovable property (not subject to a trust for sale) duty is in all cases taken in the country of its situation.

(b) As to deaths after the fiscal separation :—(i) Interests (whether in possession or reversion) in unadministered estates (being interests in pure personalty or in residuary real estate or leaseholds subject to an operative trust for sale) are treated as situate in the country where the deceased owner of such estate was domiciled, regardless of the residence of his personal representatives. All other such interests are situate where the (immovable) property is situate. (ii) Reversionary interests in pure personal estate (not being an unadministered estate) are treated as situate in the country where the trustees of that estate reside; if they reside in different countries, as situate in the country of the proper law of the disposition under which they act, provided that at least one trustee resides there.

Where, moreover, it is the death of a life-tenant or annuitant that is in question, the *Sudeley* principle has no application.³¹ If the property passes, or is deemed to pass, it is immaterial that the deceased may have had an interest in the income only, or even only a right against the trustees to enforce performance of the trust; it is the property passing, or in which the deceased had an interest, which is chargeable with E.D. in specie, even if the property is an unadministered estate.³²

³¹ See, e.g., *Baker v. Archer-Shee*, [1927] A. C. 844, at pp. 862-3.

³² *Att.-Gen. v. Watson*, [1917] 2 K. B. 427; *Warren's Trustees v. I. R. Commrs.*, 1928 S. C. 806; *Att.-Gen. (N. Ir.) v. Walker*, [1934] N. Ir. 179; *I. R. Commrs. v. Clark's Trustees*, 1939 S. C. 11; S. L. T. 2; *Skinner v. Att.-Gen.*, [1940] A. C. 350.

Consideration of differences in the systems of law applicable arise mainly where the distinction between movable and immovable property is in point, though in practice the rules of every kind of non-British legal system may be involved. The difference between movable and immovable property is not identical with that between personalty and realty. The latter is the normal classification of English property, while under Scots law the division is between movable and heritable property. It should be noted that where a conflict of laws arises as to devolution on death, that of immovables is determined by the *lex situs*³³ and of movables by the *lex domicilii*; the question whether property is movable or immovable must be determined by the *lex situs*.³⁴ The question which is the *situs* must, for the purpose of British death duties, be ascertained by British law. It may be mentioned that English leaseholds,³⁵ Scottish heritable bonds,³⁶ and *pur autre vie* interests in land³⁷ are all immovable property. A mortgage of land, whether in this country or elsewhere, is treated for death duty purposes as movable property in the nature of a debt situate where the deed is found or, if there is no deed, where the debtor resides.³⁸ An interest in land subject to a trust for sale has been held to be immovable until the land is sold³⁹; but if the land is abroad and there is a right enforceable against a person (trustee or debtor) in this country, such right will constitute a British asset. Capital moneys are movable and personal property for death duty purposes.⁴⁰ So

³³ *Duncan v. Lawson* (1889), 41 Ch. D. 394.

³⁴ *Re Berchtold, Berchtold v. Capron*, [1923] 1 Ch. 192.

³⁵ *Freke v. Carbery (Lord)* (1873), L. R. 16 Eq. 471.

³⁶ *Re Fitzgerald, Surman v. Fitzgerald*, [1904] 1 Ch. 573; but they are chargeable with duty as movable estate (Probate Duty Act, 1860, s. 6; Heritable Securities (Scotland) Act, 1860, s. 1).

³⁷ *Chatfield v. Berchtoldt* (1872), L. R. 7 Ch. App. 192.

³⁸ *Commr. of Stamps v. Hope*, [1891] A. C. 476; *Lawson v. I. R. Commrs.*, [1896] 2 Ir. R. 418; *Harding v. Commr. of Stamps*, [1898] A. C. 679; *Payne v. R.*, [1902] A. C. 552; *Macdonald v. Macdonald*, 1932 S. C. 79, H. L. For the contrary view, see *Re Hoyles, Row v. Jagg*, [1911] 1 Ch. 179, C. A. (which, however, turned on mortmain law affecting a charge on lands as such) and *Re Berchtold, Berchtold v. Capron*, [1923] 1 Ch. 192.

³⁹ *Re Berchtold, Berchtold v. Capron*, [1923] 1 Ch. 192; *Re Anziani, Herbert v. Christopherson*, [1930] 1 Ch. 407.

⁴⁰ *Re Midleton's (Earl) Settlement, Cotteloe v. Att.-Gen.*, [1949] A. C. 418, distinguishing *Re Cartwright*, [1939] Ch. 90, C. A., and *Re Cutcliffe's Will Trusts*, [1940] Ch. 565, and ignoring *Re Stoughton*, [1941] Ir. R. 166, on the ground that death duties are not one of "the purposes of disposition, transmission and devolution" within the meaning of the Settled Land Acts.

also is a definite sum raisable out of land.⁴¹ Proceeds of non-British immovable property of a lunatic, sold by his receiver and invested in British securities, are situate in Great Britain, notwithstanding the provisions of s. 123 (1) of the Lunacy Act, 1890.⁴²

Where under foreign law property of the deceased was held in community with his or her spouse, duty is claimed on the deceased's moiety only, so far as situate in Great Britain, on the same basis as if held in tenancy in common.

Applying the principles as to domicile, locality of assets and legal system to E.D., it has to be observed that this duty was imposed in general terms, but with a limitation as to the liability of property situate out of Great Britain. Accordingly, E.D. is payable in respect of all property passing or deemed to pass on death, if actually situate in Great Britain, regardless of the domicile, residence, nationality, etc., of the deceased owner, life-tenant, etc., or of any non-British element in the trust controlling its devolution.⁴³

As regards property situate outside Great Britain, the position is governed, as to deaths on or after July 30, 1949, by s. 28 (2) of the F. A., 1949, which exempts such property if two conditions are fulfilled, *viz.* :—

- (1) The proper law regulating the devolution of such property or regulating the disposition under which it passes is the law neither of England nor of Scotland; and
- (2) the deceased died domiciled out of Great Britain, *or* the property passes under a disposition made by a person who, when it took effect, was domiciled out of Great Britain (provided that it was not made, even indirectly, on behalf or at the expense of a person then domiciled in Great Britain), *or* the property is immovable property by the law of the country in which it is situate.

The three conditions under heading (2) above are alternative; only one need be fulfilled. And if the property is otherwise

⁴¹ *Re Anziani, Herbert v. Christopherson*, [1930] 1 Ch. 407.

⁴² *Re Mackenzie*, [1941] Ch. 69.

⁴³ *Winans v. Att.-Gen.*, [1910] A. C. 27; *Re Haig, Harris v. Drayton*, (1922), 66th Report of I. R. C., 16; 17 A. T. C. 635; *Chase National Executors' and Trustees' Corporation, Ltd. v. Att.-Gen.*, [1940] Ch. 661.

taxable only because it is a gift *inter vivos*, condition (1) is not required, only one of the conditions under (2).

Apart from a few exceptional cases,⁴⁴ the position before the F. A., 1949, was, as from the passing of the F. A., 1936, practically the same. As regards deaths before July 16, 1936, it was governed by s. 2 (2) of the F. A., 1894. The object of s. 28 (2) was to retain the *status quo* but to remove the liability of foreign property to E.D. from its previous dependence on liability to L. or S.D., which were abolished by the F. A., 1949.

The proper law regulating the devolution of movable property under an intestacy is that of the domicile of the intestate. Similarly, as regards dispositions by will,⁴⁵ unless the testator has created a trust governed by some other law.⁴⁶ In the last-mentioned class of case, as also in cases of dispositions *inter vivos*, the proper law has to be gathered, in default of express direction, from a variety of circumstances. A marriage settlement is normally governed by the law of the matrimonial domicile, *i.e.*, the domicile of the husband, or perhaps more properly "the one which must be taken to be in their contemplation when they [*sc.* the spouses] execute the settlement".⁴⁷ Even this factor, though important, will yield, not only to an express adoption of some other law, but to the countervailing evidence of other features suggesting some other law.⁴⁸ Such features, which operate equally on dispositions other than marriage settlements, include: (a) permanent residence of the trustees, a valuable criterion, since the vesting of property in persons resident in a particular country is likely to secure administration of the trust in that country (though the forum

⁴⁴ Thus foreign property over which a British domiciled testator exercises by will a general power of appointment under a foreign settlement, and property passing, under a foreign trust created by the will of a British testator, upon the death of a life-tenant domiciled abroad (both of which would formerly have been liable to L.D. and so to E.D.) now escape (property passing under a British settlement is liable, notwithstanding that the settlor was at the date of the settlement, or the deceased life-tenant at his death, domiciled abroad).

⁴⁵ *Marlborough (Duke) v. Att.-Gen.* (No. 1), [1945] Ch. 78; 1 All E. R. 165, *per* Lord Greene, M.R., at Ch. 83, though unfortunately overlooking the qualification added above.

⁴⁶ As in *Att.-Gen. v. Campbell* (1872), L. R. 5 H. L. 524; *Re Badart's Trusts* (1870), L. R. 10 Eq. 288; *Duncan's Trustees v. M'Cracken*, 1888, 15 R. 638; 25 S. L. R. 551.

⁴⁷ *Marlborough (Duke) v. Att.-Gen.* (No. 1), [1945] Ch. at p. 86, *per* Lord Greene, M.R.; but see Dicey, *Conflict of Laws* (6th ed., 1949), p. 542.

⁴⁸ *Re Bankes, Reynolds v. Ellis*, [1902] 2 Ch. 383; *Re Mackenzie, Mackenzie v. Edwards-Moss*, [1911] 1 Ch. 578; *Re Hewitt's Settlement*, [1915] 1 Ch. 228.

in which the trust *may* be enforced is not decisive); (b) the form of the disposition, which may show conclusively that a particular law has been adopted; (c) the fact that the disposition was drawn by lawyers professing knowledge of one particular law may also be indicative, but the place of execution is seldom relevant⁴⁹; (d) the situation of the property at the creation of the settlement may be relevant, but will seldom be conclusive, except where it is immovable. Immovable property, as such, devolves according to the law of the *situs*, even if subject to a disposition which, as regards other and movable property, is regulated by the law of another country. Nevertheless it has been held that non-British immovables devolving under an otherwise British disposition and subject to a trust for sale (even with power to postpone) were liable to E.D. on the death of a limited owner.⁵⁰ In such a case liability to E.D. under s. 28 (2) of the F. A., 1949, would appear to follow, on the ground that the disposition of the immovable property is regulated by British law. This will not be the case, however, if there is only a *power* to sell (which is unexercised) or even where there is a trust if it is operative only with the consent or after the death of a life-tenant; (e) any directions as to investment of the trust funds may indicate that the law of the country in which investment is allowed should operate, but this will normally not be conclusive. The actual investment of the funds at any time after the inception of the settlement is irrelevant,⁵¹ for the law governing the settlement must be ascertained at its creation⁵² and, unless the settlement itself provides for such law being changed later in certain events, can only be changed by all the interested parties joining in creating what in effect is a new disposition.⁵³ The domicile or residence of the settlor (except in the case of wills, or of marriage settlements as regards the husband) or of other parties to the disposition are normally immaterial. A disposition may be governed by the law of one country as to part of the property

⁴⁹ *Marlborough (Duke) v. Att.-Gen.* (No. 1), [1945] Ch. 84.

⁵⁰ *Att.-Gen. v. Johnson*, [1907] 2 K. B. 885; on the doubtful ground that what passed was an English chose in action. On this view the property was British and was liable to E.D. on that ground alone; but it was also held to be liable to S.D., which depended, not on its situation, but on the trust being British.

⁵¹ *Marlborough (Duke) v. Att.-Gen.* (No. 1), [1945] Ch. at p. 85.

⁵² *Att.-Gen. v. Belilios*, [1928] 1 K. B. 798, C. A.

⁵³ As in *Re Smith's Trusts* (1864), 10 L. T. 598.

subject to it and by that of another as to the remainder.⁵⁴ Where foreign movables are held by joint owners domiciled in Great Britain so as to pass by survivorship duty will normally be payable by reason of the domicile of the deceased, if British both at the date of the investment and of his death. Where this is not the case, it will be a question of fact whether the property devolves by survivorship under British or foreign law.

A marriage settlement is regarded by the Revenue as taking effect, for the purpose of s. 28 (2) (b) (i), at the marriage, so that the prior domicile of a settlor wife is immaterial.⁵⁵

In the result E.D. is now payable (subject to exemption under any other head) in respect of all movable non-British property forming part of the free estate of a person domiciled in Great Britain, or passing on the death of any person under a disposition, an intestacy or other devolution regulated by British law, or even where not regulated by British law if the settlor when it took effect and the deceased at his death were both domiciled in Great Britain; also in respect of such property, being the subject of an otherwise taxable gift *inter vivos* made by a person domiciled in Great Britain at his death and at the date of the gift; or being an investment in the joint names of the deceased (domiciled in Great Britain) and another and passing by survivorship.

Accountability and Incidence.—As an executor is by ss. 6 (2) and 8 (3) of the F. A., 1894, accountable for E.D. on all personal property of which his testator is competent to dispose, he is accountable for E.D. on such property out of Great Britain (if liable). This liability is limited to the assets which he receives as executor or might have received but for his neglect or default (s. 8 (3)). Accordingly he may be liable, to the full amount of the British assets so received, for E.D. on non-British personalty. It is immaterial that separate executors are appointed abroad.⁵⁶ As we have seen (p. 133, above), property outside Great Britain does not pass to the executor as such and the E.D. is therefore a charge on such property under s. 9 (1) of the F. A., 1894, as against the beneficiaries entitled to it, unless the property is situate in a British possession.⁵⁷

⁵⁴ *Re Mackenzie, Mackenzie v. Edwards-Moss*, [1911] 1 Ch. 578.

⁵⁵ A view not free from doubt.

⁵⁶ *Re Manchester (Dowager Duchess), Duncannon (Viscount) v. Manchester (Duke)*, [1912] 1 Ch. 540.

⁵⁷ F. A., 1894, s. 20 (2); as to what is a British possession, see above p. 85.

Tax-free Securities.—Under powers conferred by s. 47 of the F. (No. 2) A., 1915, and s. 22 (1) (b) of the F. (No. 2) A., 1931, certain Government securities were issued with a condition that neither capital nor interest should be liable to taxation, present or future, while “in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom”.

The securities at present affected by this exemption are:—

4 per cent. Funding Loan, 1960–90.

4 per cent. Victory Bonds.

National Savings Certificates issued before September 1, 1922 and on or since November 22, 1939 (including the £1 Certificates, but excluding the 9th issue—1951).

3½ per cent. War Loan, 1952.

3 per cent. War Loan, 1955–59.

2½ per cent. National War Bonds, 1945–47, 1946–48, 1949–51, 1951–53, and 1952–54 (but not 1954–56).

3 per cent. Defence Bonds (1st, 2nd, 3rd, and 4th issues but not 5th issue).

3 per cent. Savings Bonds, 1955–65, 1960–70, and 1965–75.

2½ per cent. Defence Bonds.

Northern Ireland is part of the United Kingdom for this purpose, but not Eire, the Channel Islands or the Isle of Man.

“Ordinary residence” has no technical meaning.⁵⁸ It need not mean a residence chosen voluntarily.⁵⁹ Regular visits to a country for business purposes, even if of short duration, may constitute ordinary residence in that country.

“Beneficial ownership” has been officially taken to refer to the deceased owner, as regards securities forming part of his free estate, life-tenant,^{59a} as to those passing on his death, reversioner, as regards a claim in his estate, and, in the case of a gift *inter vivos*, the donee, not the deceased donor.⁶⁰ The exemption does not apply to securities above-mentioned owned by a partnership, where one of the partners is domiciled and ordinarily resident abroad; but it is extended to repayments of British income tax on interests on such securities, if themselves exempt.

⁵⁸ *Levene v. I. R. Commrs.*, [1928] A. C. 217. at p. 232

⁵⁹ *I. R. Commrs. v. Lysaght*, [1928] A. C. 234, *per* Lord Buckmaster, at p. 248; and see *Re Mackenzie*, [1941] Ch. 69.

^{59a} As to the death of a life-tenant, it was decided in *Re Smith's Settlements, Executor, Trustee & Agency Co. of S. Australia, Ltd. v. I. R. Commrs.*, [1951] 1 T. L. R. 210, that the domicile, etc., of the beneficiary was the criterion: this decision is seemingly applicable to the deceased's free estate, but may be appealed against.

⁶⁰ *Chase National Executors', etc., Corp'n. v. Att.-Gen.*, [1940] Ch. 661.

CHAPTER VIII

PERSONS KILLED IN WAR, ETC.

Common Seamen, Marines, Soldiers and Airmen.—S. 8 (1) of the F. A., 1894, applied to E.D. the exemption from Probate Duty under the Stamp Act, 1815, “ of the property of common seamen, marines or soldiers who are slain or die in the service of Her Majesty ”. This was extended to airmen by the Air Force (Application of Enactments) (No. 3) Order, 1918, and operates whether the seaman, etc., was killed on active service or not.¹

This exemption is limited to the “ property ” of the seaman, etc., but this is treated as including property which had been his (*e.g.*, a gift within five years of death), property which he had nominated, settled or disentailed and resettled, property over which he had and exercised a general power of appointment, property representing a provision by him (*e.g.*, under s. 2 (1) (*d*) of the F. A., 1894) and property which can be treated as either settled or unsettled for the purpose of s. 16 (3) of the F. A., 1894 (see above, p. 94). The exemption is given to the same property passing on another death under the disposition of the seaman, etc.

“ Common seamen ”, etc., includes seamen not above the rank of chief petty officer, marines not above that of sergeant, and soldiers and airmen not above the rank of corporal, including a lance-sergeant.

Deaths in War.—S. 14 of the F. A., 1900, authorised the Treasury to remit, on the recommendation of the War Office or the Admiralty, death duties to the amount of £150 leviable on

¹ This exemption was extended to all members of the Home Guard dying before November 19, 1940, and to those below the rank of sergeant dying on or after that date, provided the death occurred on duty or from causes arising on duty. It was also given to soldiers, sailors and airmen in the service of Dominion and Allied Governments dying before April 1, 1948. The exemption applied to members of the Women's Royal Army Corps (formerly Auxiliary Territorial Service), of the Women's Royal Air Force (formerly Women's Auxiliary Air Force) and of the Voluntary Aid Detachment (enrolled under the Army Council) not above that of corporal or lance-sergeant, but not to members of the Women's Royal Naval Service or any other women's service.

property not exceeding £5,000 in value passing to his widow or lineal descendants on the death of a person dying from wounds inflicted, accident occurring or disease contracted within twelve months of death while on active service.

S. 1 (1) of the Death Duties (Killed in War) Act, 1914, as amended by s. 46 of the F. (No. 2) A., 1915, s. 29 of the F. A., 1917, s. 44 of the F. A., 1918, and s. 31 of the F. A., 1919, applied this power of remission to deaths in the war of 1914-18, with the following extensions :—

(a) relief was extended to property passing to lineal ancestors, brothers and sisters, and descendants of brothers and sisters of the deceased ²;

(b) relief from all duties was given to the first £5,000 worth of property ³ passing to the favoured relatives, and the remainder (if any) of the property passing to such relatives was charged with duty reduced on a percentage basis calculated according to the normal expectation of life of the deceased;

(c) relief as mentioned above was given if the death resulted from wounds, accident or disease within three years of the death either on active service or in the course of operations arising directly out of the war but after its termination;

(d) the relief applied to a master or member of a crew of a ship or fishing boat dying from causes arising from the operations of the war and within twelve months of the occasion of death (F. A., 1917, s. 29).

S. 1 (3) of the Death Duties (Killed in War) Act, 1914, provided that the relief given by s. 15 of the F. A., 1914 (see above, p. 83) should not be given where relief under the 1914 Act was given, unless the relief under the former exceeded that under the latter, when the former alone should be given.

The first £5,000 of an estate to which these provisions apply is ignored completely for all purposes, so that the balance of the

² In practice relief was extended to property passing to a surviving husband of a woman member of the Forces or merchant service, to illegitimate children, a divorced spouse (but only to property acquired before divorce), a natural or adoptive parent, brothers, etc., of the half-blood, adopted children (and their issue) and to "reputed wives" awarded a widow's service pension. Relief did not extend to spouses of these specified persons. In deciding to whom the property passes the actual living beneficiary is taken.

³ For this purpose an interest in expectancy is valued as at the death of the deceased owner, and articles of national, etc., interest and timber are ignored.

estate is entitled to all the benefits, *e.g.*, non-aggregation, exemption from L. or S.D. by reason of the £1,000 or £15,000 limits not being exceeded, payment of fixed duty, etc., as if there were no other estate. But the remission does not destroy any exemption that would otherwise be earned by full payment of E.D.

These provisions, unlike the exemption given by s. 8 (1) of the F. A., 1894, applied to all Death Duties.

S. 43 of the F. A., 1921, applied them to deaths in the course of "the present state of disorder in Ireland".

By s. 38 of the F. A., 1924, all relief which might have been given by s. 14 of the F. A., 1900, as amended by later enactments⁴ is to be given^{4a} on the deaths after August 31, 1921, of members of His Majesty's forces, subject to the Naval Discipline Act or to military law under Part V of the Army Act or to the Air Force Act, who die from wounds inflicted, accidents occurring, or disease contracted, while on active service against an enemy, or on service of a warlike nature, or which in the opinion of the Treasury involves the same risks.⁵

In practice relief is given where death occurs after leaving the service, if from wounds, etc., received during service. It is not necessary that death should occur within three years of the wounds, etc.

By s. 64 (1) of the F. A., 1940, the provisions of s. 38 of the F. A., 1924, were applied to "masters and members of the crews of ships and fishing boats and pilots" dying at any time "from causes arising during the period of the present emergency" out of the operations of the war".⁷

S. 64 (2) provided that where E.D. became chargeable on the death of any person killed, etc., in the "present emergency"⁶ within the meaning of the F. A., 1924, s. 38, and the F. A., 1940,

⁴ Other than s. 2 of the Death Duties (Killed in War) Act, 1914.

^{4a} *I.e.*, there is no discretion in the Treasury, provided all the conditions of exemption are fulfilled.

⁵ This included a Home Guard dying from causes arising while on duty, and members of the women's military and air services. This exemption was extended to members of Dominion and Allied forces dying before April 1, 1948.

⁶ September 3, 1939 to October 8, 1950: see s. 64 (3) and Courts (Emergency Powers) (End of Emergency) Order, 1950.

⁷ The relief was given in practice to members of crews of lightships and of British (even if the deceased person was a foreigner) and of Allied warships and other ships.

s. 64 (1) and subsequently E.D. became chargeable on the same property or any part thereof on another such death,⁸ being that of a person to whom such property has passed⁹ on the earlier death, the whole of the death duties payable on the later death on that property or that part thereof should be remitted and such property should not be aggregated with any other property passing on the later death. To secure exemption it is necessary that the property passing on the first death should be identifiable assets passing on the second death.

S. 46 of the F. A., 1941, extends the same relief as is accorded as above on the deaths of members of the forces of the Crown to the deaths of civilians resulting from injuries received within twelve months of death and caused by operations of war during "the present emergency".¹⁰ Evidence must be given that an "operation of war" was the actual and primary cause of death¹¹; no "recommendation" from a Government department is required, but a copy of the death certificate should be forwarded. In all other cases accountable persons must, in order to obtain relief under the Death Duties (Killed in War) Act, 1914, or s. 38 of the F. A., 1924, as amended, apply to the relevant department for a recommendation that the death in question entitles to relief; this recommendation, if granted, is forwarded direct to the Estate Duty Office. The relevant departments are:—

Royal Navy, Royal Marines.	The Secretary, Naval Law Branch, Admiralty, London, S.W.1.
British Land Forces	War Office, Effects Branch, Droitwich Spa, Worcs.
Royal Air Force ...	The Under Secretary of State, Air Ministry [s. 14 (Cas.)], 2 Seville Street, Knightsbridge, S.W.1.
Dominion Forces ...	The Under Secretary of State, Commonwealth Relations Office, London, S.W.1.
Colonial Forces ...	The Under Secretary of State, Colonial Office, London, S.W.1.

⁸ Or, for either death, a civilian dying through operations of war within s. 46 (1) of the F. A., 1941 (see next paragraph).

⁹ I.e., directly, not subject to an intervening life-interest, etc.

¹⁰ See above, p. 168, n. 6. If the deceased is a married woman the same relief is given to property passing to her husband as is given to that passing to the widow of a member of the forces. This section is retrospective.

¹¹ *Re Pitt, Mendel v. Att.-Gen.* (1945), 173 L. T. 272; 89 S. J. 554.

Indian Forces ... The Under Secretary of State, Accountant
General's Department, Commonwealth Rela-
tions Office, London, S.W.1.

Mercantile Marine, The Registrar General of Shipping & Seamen,
Fishermen, Pilots. Llantrisant Road, Llandaff.

In apportioning the £5,000 for E.D. purposes, only property liable to E.D. is considered; and in the case of L. and S.D. only property liable to one or other of those duties is considered. Where property is liable to both E.D. and L. or S.D. the apportionment for E.D. purposes is, in general, followed for L. and S.D. purposes.

All these provisions merely determine the amount of duty payable, if any. They do not affect its incidence. Thus if property is settled on A for life, who is killed in war, with remainder equally to his widow, child and a stranger, the reduced E.D. is borne equally by the three beneficiaries.¹²

The remission under s. 38 of the F. A., 1924 (as amended) extends only to the property passing on the death of the person "killed in war" and not to the same property passing on a subsequent death under his will or other instrument (unless the second death was one to which s. 64 (2) of the F. A., 1940, applies). Owing to the somewhat different wording of the Death Duties (Killed in War) Act, 1914, the remission on the death of the person "killed in war" (1914-21) is extended to future deaths (whether resulting from the war or not) on which the same property passes, under any title, to the relatives within the specified classes.

¹² *Re Joel, Rogerson v. Joel*, [1943] Ch. 311; 2 All E. R. 263, C. A.

CHAPTER IX

OBSOLETE DUTIES

Probate Duty was imposed in 1694 for England and in 1804 for Scotland, as a stamp duty on the probate or letters of administration. At first a duty on the document, it was soon made a duty on a sliding scale on the estate and from 1881 was charged on the Inland Revenue Affidavit, and not on the probate, etc. In the case of an intestacy it was often known as Administration Duty, and in Scotland as Inventory Duty. It is not chargeable where E.D. is chargeable, *i.e.*, on deaths on or after August 2, 1894, but is still met with where a reversion falls into the estate of a person dying before such date.

P.D. was confined to personal or moveable estate, including leaseholds, personal estate disposed of by will under a general power of appointment,¹ Scottish heritable securities² and real estate equitably converted, but did not apply to real estate as such or foreign assets.

The last scale of rates of P.D. in operation was that imposed by the Customs and Inland Revenue Act, 1881, s. 27, for estates to which the first grant was obtained on or after June 1, 1881, *viz.*, £1 for each sum of £50 and any part of £50 over any multiple of £50 where the net value of the estate covered by the grant exceeded £100 but did not exceed £500; where such net value exceeded £500 but not £1,000, 25s. for each £50, etc.; and where such net value exceeded £1,000, £3 for each sum of £100 and any part of £100 over any multiple of £100.³ Where the gross personal estate of a person dying on or after June 1, 1881, including personal estate abroad exceeded £100 but did not exceed £300 a fixed duty of 30s. was payable.⁴ The scales in force before this were those imposed by the Customs and Inland Revenue Act, 1880, and the Stamp Act, 1815.

¹ Probate Duty Act, 1860, s. 4.

² *Ib.*, s. 6; Heritable Securities (Scotland) Act, 1860, s. 1.

³ But s. 27 provided that an additional Scottish inventory, where the original inventory was exhibited before June 1, 1881, should be charged at the rates in force before the 1881 Act.

⁴ Customs and Inland Revenue Act, 1881, s. 33.

The value of property for purposes of P.D. in English cases where the first grant was obtained under the 1881 Act is the value as at the date of the affidavit leading to such grant, including all income to such date.⁵ Any omitted asset must be valued also at such date,⁶ and interest at the rate applicable to Death Duties on the additional duty is charged from such date. Where an interest in expectancy falls into such an estate its value as at the date of the affidavit to the first grant is found by discounting its value when in possession. In all other cases (*i.e.*, other than omissions from affidavits for English grants under the 1881 Act) the property is required to be valued as at the date of the affidavit, whether original or corrective, in which the item in question is included, with income to such date. A merely contingent interest, not accounted for until it matures, is accordingly liable at its full value in possession.⁷ If, when an omitted asset or reversion is accounted for, the original grant obtained before the 1881 Act is still operative, duty thereon is assessed at the pre-1881 rates attributable to the amount of the original estate plus the omitted asset; if the original grant is not operative the omitted asset is regarded as one as to which a grant had not been taken out and duty is charged on it at the 1881 rates as an estate by itself. In cases under the Stamp Act, 1815, no interest is charged on the duty if the affidavit is rendered within six months of the falling in of an interest in expectancy or accruer of other assets; if it is not, interest is charged from the time when the duty became payable.⁸

Provision is made in the Stamp Act, 1815, s. 40, the Railway Passenger Duty Act, 1842, s. 23, and the Customs and Inland Revenue Act, 1881, s. 31, for the return of P.D. on the ground of over-estimate or further debts.

The forms of affidavit for P.D. in English cases are :—

Form A, for original affidavit, except where the fixed duty of 30s., or no duty, is payable, when Form B is used ;

Form D, for corrective affidavit, in cases under the 1881 Act ;

⁵ Customs and Inland Revenue Act, 1881, s. 32.

⁶ This includes contingent interests. The rule that an interest in expectancy subject to an overriding power of appointment is treated as of no value (see above, p. 109) applies to P.D. as to E.D. (provided a grant has been obtained before the interest falls into possession).

⁷ *Lord v. Colvin* (1867) L. R. 3 Eq. 737.

⁸ Stamp Act, 1815, s. 41.

Forms L, M and N, for corrective affidavit in cases under the prior Acts, according as further duty is being paid or duty is being repaid on account of over-estimate or on account of debts.

Scottish inventories are given up in manuscript.

*Account Duty*⁹ was imposed by the Customs and Inland Revenue Act, 1881, ss. 38-40, which was amended by s. 11 of the Customs and Inland Revenue Act, 1889. The circumstances in which it was payable have been stated above, p. 23. It applied only to personal property and only to deaths on or after June 1, 1881, and before August 2, 1894, when E.D. took its place. It should be noted that A.D. was in certain circumstances payable in respect of non-British assets,¹⁰ but that it did not apply to property subject to a marriage settlement.

The form of account for A.D. is Form C. The property should be valued as at the date of death.

Legacy and Succession Duties may be considered together, since, unlike all the other duties, they were "acquisition duties", chargeable on property conceived, not as changing hands on death, but as acquired beneficially on or with reference to death. They were complementary, in the sense that in no case could both be charged on the same property on the same death (L.D. prevailing in case of conflict) and that between them they taxed all acquisitions on death controlled by British law.

L.D., imposed by the L. D. A., 1796, the Stamp Act, 1815, and s. 4 of the Revenue Act, 1845, taxed all legacies (including annuities and residue) given by any testamentary instrument (including revocable nominations) out of personal or moveable estate of a testator or intestate. S.D., imposed by the S. D. A., 1853, taxed real estate (including leaseholds) and proceeds of freehold property or legacies thereout¹¹ devolving under wills or intestacies, and also all property, real or personal, acquired on or by reason of death under dispositions *inter vivos*.

Both L. and S.D. were chargeable at rates varying according to the relationship of the beneficiary to the testator, intestate or

⁹ This name is not found in the Act, and the duty is really the same as Probate Duty, extended to property other than "free estate". Thus, if property bears A.D. on a settlor's death it is not also chargeable with P.D. if it later falls into his estate (see J. A. Gosset, *Practical Guide to Account Stamp Duty*, 1887, p. 46).

¹⁰ See J. A. Gosset, *op. cit.*, p. 40.

¹¹ Where the testator died on or after July 1, 1888.

other predecessor from whom the property was derived. The rates of duty, in cases to which s. 58 of the F. (1909-10) A., 1910, applied, were as follows (but at double the stated rate where s. 49 of the F. A., 1947, applied, *i.e.*, where the testator, etc., died, or the "event" giving rise to the claim occurred, on or after April 16, 1947¹²):—

Husband, wife, lineal issue and ancestor	..	1 per cent.
Brother, sister and descendants of either	..	5 ,, ,,
All other relatives, strangers in blood, charities, corporations, etc.	.. .. .	10 ,, ,,

The Act of 1909 applied only where the testator, etc., died, or the first succession arose, on or after April 30, 1909. In earlier cases the rates were:—

Lineal issue and ancestors	.. .. .	1 per cent.
Brother, sister and descendants of either	..	3 ,, ,,
Brother and sister of a parent and descendants of same	.. .. .	5 ,, ,,
Brother and sister of a grandparent and descendants of same	.. .. .	6 ,, ,,
All other relatives, strangers in blood, charities, corporations, etc.	.. .. .	10 ,, ,,

In pre-1909 cases the 1 per cent. duty was in general not payable where E.D., P.D. or A.D. had been paid. In post-1909 cases it was payable where such prior payment had occurred, but only if certain limits were exceeded (see below). Where no E.D., P.D. or A.D. were payable the above-mentioned rates were increased, as regards S.D. only, from 1 per cent. to $1\frac{1}{2}$ per cent. (except in the case of spouses, who were never liable to L. or S.D. apart from the 1909 Act) and all other rates by $1\frac{1}{2}$ per cent.¹³ In ascertaining relationship of beneficiary to predecessor, relatives of the half blood counted as those of the whole blood, and a person married to a relative of nearer consanguinity than himself paid at the rate appropriate to his or her spouse.

L. and S.D. were payable on the value of the legatee's or

¹² But the doubled rate of the F. A., 1947, did not apply to legacies or successions given for "public or charitable purposes".

¹³ These additional rates, imposed by s. 21 of the Customs and Inland Revenue Act, 1888, were (with the original rates) doubled by the F. A., 1947, where applicable.

successor's interest, the Tables annexed to the S. D. A., 1853, supplying values of annuities and life-interests. Where the benefit fluctuated, duty was payable from time to time on the actual amounts received. Duty on personalty given to persons in succession who were all liable at the same rate was chargeable on the capital value of the property at the date when the first benefit arose¹⁴; such payment obviated a further claim on the death of a life-tenant, etc.¹⁵ S.D. on realty or leaseholds as such was always payable on the interest of each successor as it arose and on the value of such interest, except that even if the successor was competent to dispose of the property he was chargeable only on his life-interest therein until s. 18 of the F. A., 1894, directed payment in such a case on the principal value of the property. S. 18 of the L. D. A., 1796, contained special provisions for charging L.D. where a legatee had a general power of appointment, and the S. D. A., 1853, for charging S.D. on joint property accruing by survivorship (the deceased joint tenant being the predecessor, no matter who in fact provided the property, unless the joint tenants had themselves taken it as a succession),¹⁶ on property subject to a general power of appointment,¹⁷ upon the extinction of terminable charges,¹⁸ and upon dispositions with a reservation of an annual payment for life.¹⁹

L.D. was payable on "retainer", delivery or payment of the legacy,²⁰ from which it followed that the property should be valued at such date.²¹ S.D. was due on the successor's becoming entitled in possession.²² L.D. was cumulative, so that

¹⁴ L. D. A., 1796, s. 12, applied to S.D. on personalty by s. 32 of the S. D. A., 1853.

¹⁵ But if the life-tenant died on or after April 16, 1947, the "further" duty imposed by the F. A., 1947, was payable, thus, to the extent of the benefit then accruing, doubling the original rate of duty.

¹⁶ *Ib.* s. 3.

¹⁷ *Ib.* s. 4.

¹⁸ *Ib.* s. 5.

¹⁹ *Ib.* s. 7. Duty was payable on the annuitant's death on the value of a perpetual annuity of the amount reserved (but not exceeding the value of the property) or, as to realty and leaseholds, on the successor's life-interest. Unlike E.D. under s. 2 (1) (c) of the F. A., 1894, incorporating s. 38 (2) (a) of the 1881 Act, S.D. was only payable in such cases if the reservation was legally enforceable.

²⁰ L. D. A., 1796, s. 6: as to what constituted retainer, see *Re Claremont*, [1923] 2 K. B. 718; *Ld. Adv. v. Wotherspoon's Trustees*, 1930 S. L. T. 82.

²¹ *Att.-Gen. v. Cavendish* (1810) Wight. 82.

²² S. D. A., 1853, s. 20.

if personalty was settled by the will of X on A for life, with remainder to B absolutely, who died before A bequeathing his estate to C absolutely, who also died before A bequeathing his estate to D, on A's death L.D. was payable on the legacy to B (unless A and B were liable at the same rate, when it would have been payable on the capital on X's death), and also under B's will on the benefit to C and under C's will on the benefit to D.²³ But, as regards S.D., the death of an expectant successor in the life of a life-tenant caused his succession, if to realty or leaseholds as such, to be displaced by the succession of the devisee under the original successor's will: in the case of pure personalty only one S.D. was payable, at the higher of the two alternative rates.²⁴ Neither L. nor S.D. was payable on a validly disclaimed gift, but otherwise L.D. was payable on the basis of the interests taken under a will or intestacy, regardless of any different division of the property by arrangement.²⁵ Successions which, before falling into possession, had been alienated, or had been accelerated by the surrender of some prior interest, were taxable at the time and in the manner applicable if no alienation or acceleration had occurred.²⁶ If such succession had been transformed, *e.g.*, by a resettlement, into one derived from the successor himself, duty was payable as if no such new disposition had been made.²⁷

L. and S.D. were subject to certain common exemptions:— (1) neither was payable in respect of unsettled property within the meaning of s. 16 (3) of the F. A., 1894, not exceeding £2,000, or before the F. A., 1947, £1,000, in value²⁸; (2) s. 1 of the F. A., 1894, exempted lawful ancestors and issue from duty where E.D. was chargeable, but s. 58 (2) of the F. (1909–10) A., 1910, charged them, and also spouses of the testator, intestate or

²³ *Att.-Gen. v. Cleave* (1873) 31 L. T. 86.

²⁴ S. D. A., 1853, s. 14.

²⁵ S. 23 of the L. D. A., 1796, afforded a statutory exception, which was confined to compromises of disputes as to the construction of particular gifts in wills. As to S.D. in cases of compromise, see *Ld. Adv. v. Gordon*, 1895, 22 Rett. 639; 32 S. L. R. 532; and *Ld. Adv. v. Christie's Trustees*, 1905, 12 S. L. T. 690.

²⁶ S. D. A., 1853, s. 15.

²⁷ *Ib.* s. 12.

²⁸ As amended (see above, p. 94). If the £1,000 or £2,000 was only slightly exceeded the duty was not to exceed such excess (F. A., 1914, s. 13 (2); F. A. 1947, s. 50 (1)).

predecessor, with duty at 1 per cent.²⁹ where the property passing and liable to E.D. exceeded £15,000 (within the very technical meaning of that sub-section) and the individual benefits exceeded certain limits³⁰; (3) as from the F. A., 1947, all legacies or successions derived by the same person from the same testator, etc., on any death or upon the same death from any person which did not exceed £100 in total value were exempted³¹ (previously specific legacies under £20 in value and—until the abolition of S.D.—successions taken on a particular death and derived from the same predecessor which totalled less than £100 in value were exempt³²); (4) settled chattels were exempt while enjoyed in kind by a person not having power to convert them into income-yielding property.³³

The method of accounting for L. and S.D. may best be dealt with under the different forms of account:—

Form No. 1: for L. or S.D. on pecuniary, general and specific legacies, payments from time to time, or on account of residue.

Form No. 2: for L.D. on annuities and on life or other limited interests in pure personalty, valued according to the Tables annexed to the S. D. A., 1853. Duty was payable by four yearly instalments, but could be paid in one sum under discount. This form was also used for assessing duty on residue where payable on a life-interest only, *Form No. 3* being annexed as schedule.

Form No. 3 (to be rendered in duplicate): the “residuary account” for L.D. on the capital of the residuary estate of a testator or intestate (including realty and leaseholds given therewith on trust for sale). It should include an inventory of the whole estate in its state and at its value as at the date of retainer, plus all income from the death to retainer. All legacies, debts, duties and expenses properly payable out of residue should be

²⁹ Two per cent. under the F. A., 1947.

³⁰ Specified in s. 58 (2) (b) and (c) of the F. (1909–10) A., 1910, and F. A., 1947, s. 50 (2) (b). S. 50 (3) of the 1947 Act applied “marginal relief” to this exemption.

³¹ S. 50 (2) (a): again with “marginal relief”.

³² S. D. A., 1853, s. 18.

³³ L. D. A., 1796, s. 18; S. D. A., 1853, s. 32.

deducted. Where the estate is treated as retained at the death *Form 3-2* (in duplicate) was appropriate.

Form No. 3-1 (or in Scotland *3A* : both in duplicate) : for duty on the capital of personal estate (including proceeds of realty and leaseholds) divisible on the death of a life-tenant under a will.

Form No. 4 (in duplicate) : for S.D. on the capital value of pure personalty. Deduction is allowable for E.D. payable out of the property and for costs of distribution.

Form No. 5 (in duplicate) : for S.D. on pure personalty chargeable by way of annuity or life-interest, and in connection with the cesser of annuities, etc., under ss. 5 and 7 of the S. D. A., 1853. The duty was payable by four yearly instalments.

Form No. 6 (in duplicate) : for S.D. on successions to realty and leaseholds as such, except where the successor on a death after August 1, 1894, was competent to dispose. The gross annual value should be included, less chief or ground rents or feu duties, fire insurance, repairs, rates, etc. The duty could be paid by instalments as provided by s. 21 of the S. D. A., 1853 and s. 22 (1) of the Customs and Inland Revenue Act, 1888, second and subsequent instalments on *Form No. 7*.

Form No. 6-1 (or *6A* in Scotland : both in duplicate) : for successions to real and leasehold property as such where the successor was competent to dispose. The property should be included at its value for E.D. purposes, and deduction taken for the E.D. Duty could be paid by the same instalments as for E.D., second and subsequent instalments on *Form 7-1* (*7A* in Scotland).

Form No. 8 (in duplicate) : for L.D. on proceeds of leaseholds and for S.D. on proceeds of realty and leaseholds directed to be sold or actually sold under a power, where chargeable on the capital value. The gross proceeds or principal value, if unsold, should be included, with rents to date of sale and income of proceeds thereafter to date of account.

Form No. 9 (in duplicate) : for S.D. on the cesser of terminable charges on realty and leaseholds where the successor acquired the property as a succession and duty is payable on

his life-interest and for duty under ss. 5 and 7 of the S. D. A., 1853, where the property is realty or leaseholds. The duty could be paid by instalments as under *Form No. 6*, above.

Form H (or in Scotland, *T*): for obtaining a return of L. or S.D. wrongly paid or overpaid. It should be sworn and accompanied by the stamped account on which the original payment was made.

L. and S.D. were abolished by s. 27 of the F. A., 1949, as regards legacies derived from testators or intestates dying on or after July 30, 1949, and successions conferred thereafter, and also on all other legacies and successions on which L. or S.D. would otherwise have been payable on any of the following events happening on or after July 30, 1949: (a) a death, (b) the determination of any charge, estate, interest or trust, (c) the exercise of a power of appointment, (d) the making of any payment formerly chargeable under s. 11 of the L. D. A., 1796 (*i.e.*, on "time to time payments") or s. 25 of the S. D. A., 1853 (*i.e.*, on premiums for renewal of leases), or (e) any other event affecting the right to the legacy or succession or its enjoyment or changing the nature of the property concerned.

"*Temporary*" *Estate Duty* was imposed by the Customs and Inland Revenue Act, 1889, ss. 5-9, in the form of an addition of 1 per cent. to P.D. where the value of the personal estate of a deceased person exceeded £10,000, and to A.D. where the value of the property subject thereto exceeded £10,000, and to S.D. where the value of a succession exceeded £10,000 (or in the case of realty taken under a will or intestacy where the value of the succession with that of any other benefit to the successor under such will or intestacy exceeded £10,000). It was imposed only for seven years, but was virtually abolished by the F. A., 1894, s. 1, and schedule I, 4. It is still occasionally payable in respect of accretions to estates of persons to whom representation was granted on or after June 1, 1889, and who died before August 1, 1894, and is allowable in appropriate cases against E.D. under s. 21 of the F. A., 1896 (see above, p. 82).

The forms of account are: *Form E*, where additional to P.D.; *Form F*, where additional to A.D.; *Form 13*, where additional to S.D.; and *Form G* for correction of the duty.

Settlement Estate Duty was imposed by s. 5 (1) of the F. A., 1894, as a "further E.D." at the rate of 1 per cent. on the principal value of all settled property. The rate was raised to 2 per cent. by the F. (1909-10) A., 1910, s. 54, in the case of deaths on or after April 30, 1909. This duty was abolished by the F. A., 1914, s. 14, in the case of deaths on or after May 12, 1914. The latter Act also abolished the exemption from a further E.D. on settled property passing on a death after August 15, 1914 (see above, p. 57).

The scheme of the F. A., 1894, was that E.D. should not be payable more than once during the continuance of a settlement of property until the death of a person competent to dispose of it, but that instead S.E.D. should be paid with the E.D. first payable in respect of it.

S.E.D. was not payable—(1) where the only life interest was that of the husband or wife of the deceased; (2) where the disposition creating the settlement took effect before the F. A., 1894; (3) where the net value of the property passing on the death (exclusive of property settled otherwise than by the will of the deceased) did not exceed £1,000; (4) where land or chattels were alienably settled; (5) in respect of settled property liable to E.D. by reason only of a gift by the deceased.³⁴

By s. 14 of the F. A., 1898, where S.E.D. was paid on a death after June 30, 1898, in respect of any property contingently settled and it is thereafter shown that the contingency has not arisen and cannot arise, the S.E.D. (but not the interest paid on it) is to be repaid. In practice the duty is repaid whether the settlement was in terms contingent or not, if in fact it fails or if in the events which happen (as provided for in the settlement, excluding extraneous events) the only life-interest is that of the deceased's husband or wife or the life-tenant becomes competent to dispose of the property.³⁵ Though the section does not specify to whom repayment should be made, it is in practice made to the persons who paid the duty or their successors in title.

The form of account is C-2 (in duplicate). Form D-2 is used for paying additional S.E.D. or obtaining a refund of overpaid S.E.D.

³⁴ *Att.-Gen. v. Milne*, [1914] A. C. 765.

³⁵ *Ld. Adv. v. Milne's Trustees* (1912), 55 Rep. C. I. R. 1.

The allowance of S.E.D. against E.D. given by s. 14 (b) of the F. A., 1914, and the provision for repayment of interest on S.E.D. have been dealt with above, p. 83.

In practice S.E.D. is now payable only, or almost only, in the estate of a reversioner who died between August 2, 1894 and May 11, 1914, and then only if no E.D. is payable on the life-tenant's death under the prior title against which the S.E.D. would be allowable. In such cases the fact that the reversion fell in by a death after May 11, 1914, is immaterial, as S.E.D. in respect of an interest in expectancy is (like E.D.) payable in connection with the reversioner's death.³⁶

³⁶ *Att.-Gen. v. Smith*, [1923] 2 K. B. 531.

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APPENDIX A

The Finance Act, 1894

(57 & 58 VICT. c. 30)

[31st July 1894.]

PART I

ESTATE DUTY

Grant of Estate Duty

1. In the case of every person dying after the commencement of this Part of this Act, there shall, save as herein-after expressly provided, be levied and paid, upon the principal value ascertained as herein-after provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty, called "Estate duty", at the graduated rates herein-after mentioned, and the existing duties mentioned in the First Schedule to this Act shall not be levied in respect of property chargeable with such Estate duty.

2.—(1) Property passing on the death of the deceased shall be deemed to include the property following,¹ that is to say:—

- (a) Property of which the deceased was at the time of his death competent to dispose;
- (b) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole;
- (c) Property which would be required on the death of the deceased to be included in an account under section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by section eleven of the Customs and Inland Revenue Act, 1889,² if those sections were herein enacted and extended to real property as well as personal

¹ See also F. A., 1940, ss. 43 and 46.

² S. 11 of the Customs and I. R. A., 1889, amended, as regards policies of assurance, by F. A., 1948, s. 76, as to deaths on or after April 7, 1948.

property, and the words “voluntary” and “voluntarily” and a reference to a “volunteer” were omitted therefrom³; and

- (d) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.⁴

(2) . . .⁵

(3) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person, under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months⁶ before his death where possession and enjoyment of the property was bona fide assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

3.—(1) Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a bona fide purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.⁷

(2) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of Estate duty.⁷

³ Amended by F. (1909-10) A., 1910, s. 59, and F. A., 1946, Schedule XI, and, as regards policies of assurance, by F. A., 1948, s. 76.

⁴ Extended by F. A., 1934, s. 28, and F. A., 1939, s. 30.

⁵ Subsection (2), repealed by s. 28 (2) of the F. A., 1949, as regards deaths on or after July 30, 1949, read as follows:—

“(2) Property passing on the death of the deceased when situate out of the United Kingdom shall be included only, if, under the law in force before the passing of this Act, Legacy or Succession duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes.”

It was itself amended by s. 24 of the F. A., 1936.

⁶ Amended by F. (1909-10) A., 1910, s. 59, and F. A., 1946, Schedule XI.

⁷ See also F. A., 1939, s. 31 (2), F. A., 1940, ss. 44 and 56 (1), F. A., 1944, s. 40, and F. A., 1950, s. 46.

4. For determining the rate of Estate duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which Estate duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof:

Provided that any property so passing, in which the deceased never had an interest,⁸ . . . ,⁹ shall not be aggregated with any other property but shall be an estate by itself, and the Estate duty shall be levied at the proper graduated rate on the principal value thereof. . . .¹⁰

5.—(1) . . .¹¹

(2) If Estate duty has already been paid in respect of any settled property since the date of the settlement, the Estate duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act, be payable in respect thereof, until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such property, [and who if on his death subsequent limitations under the settlement take effect in respect of such property was sui juris at the time of his death or had been sui juris at any time while so competent to dispose of the property¹²].

(3) In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death [by reason only of the failure or determination of that interest¹³].

(4) . . .¹⁴

(5) . . .¹⁵

⁸ Modified in certain cases by F. A., 1940, s. 45 (3).

⁹ Words omitted repealed by F. A., 1900, s. 18, as to deaths after the passing of that Act.

¹⁰ Words omitted repealed by F. A., 1900, s. 18, as to deaths after the passing of that Act.

¹¹ Repealed by F. A., 1914, s. 18 (1).

¹² Words in square brackets added by F. A., 1898, s. 13. Amended by F. (1909-10) A., 1910, s. 55, F. A., 1914, s. 14, and F. A., 1936, s. 25.

¹³ Words in square brackets added by F. A., 1938, s. 48, as to deaths after that Act.

¹⁴ Repealed by F. A., 1914, s. 18 (1).

¹⁵ Subsection (5), repealed by s. 28 (3) of the F. A., 1949, as to deaths on or after July 30, 1949, read as follows:—

“(5) Where any lands or chattels are so settled, whether by Act of Parliament or royal grant, that no one of the persons successively in possession thereof is capable of alienating the same, whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this Act with respect to settled property shall not apply, and the property passing on the death of any person in possession of the lands and chattels shall be the interest of his successor in the lands and chattels, and such

Collection and Recovery of Duty and Value of Property

6.—(1) Estate duty shall be a stamp duty, collected and recovered as herein-after mentioned.

(2) The executor of the deceased shall pay the Estate duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death, on delivering the Inland Revenue affidavit, and may pay in like manner the Estate duty in respect of any other property passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor, or, in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment.¹⁶

(3) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the Inland Revenue affidavit that such property exists, but he does not know the amount or value thereof, and that he undertakes, as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit.

(4) Estate duty, so far as not paid by the executor, shall be collected upon an account setting forth the particulars of the property, and delivered to the Commissioners within six months after the death by the person accountable for the duty, or within such further time as the Commissioners may allow.

(5) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

(6) Interest . . .¹⁷ on the Estate duty shall be paid from the date of the death up to the date of the delivery of the Inland Revenue affidavit or account, or the expiration of six months after the death, whichever first happens, . . .¹⁸

(7) The duty which is to be collected upon an Inland Revenue affidavit or account shall be due on the delivery thereof, or on the expiration of six months from the death, whichever first happens.

interest shall be valued, for the purpose of Estate duty, in like manner as for the purpose of Succession duty."

It was extended by s. 44 of the F. A., 1922. And see s. 45, F. A., 1950.

¹⁶ Amended by F. A., 1940, s. 54 (8).

¹⁷ Words "at the rate of three per cent. per annum" repealed by F. A., 1896, s. 40, and schedule, Part III.

¹⁸ Words "and shall form part of the Estate duty" repealed by F. A., 1896, s. 40, and schedule, Part III.

(8) Provided that the duty due upon an account of real property may, at the option of the person delivering the account, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of three per cent. per annum from the date at which the first instalment is due, . . .¹⁹ and the first instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold, shall be paid on completion of the sale, and if not so paid shall be duty in arrear.

7.—(1) In determining the value of an estate for the purpose of Estate duty allowance shall be made for reasonable funeral expenses and for debts and incumbrances; but an allowance shall not be made—

- (a) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created bona fide for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor
- (b) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor
- (c) more than once for the same debt or incumbrance charged upon different portions of the estate;

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto.²⁰

(2) An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the United Kingdom²¹ (unless contracted to be paid in the United Kingdom,²¹ or charged on property situate within the United Kingdom²¹), except out of the value of any personal property of the deceased situate out of the United Kingdom²¹ in respect of which Estate duty is paid; and there shall be no repayment of Estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Commissioners, that the personal property of the deceased situate in the foreign

¹⁹ Words "less income tax" repealed by F. A., 1896, s. 40, and schedule, Part III.

²⁰ Amended by F. (1909-10) A., 1910, s. 57, F. A., 1939, s. 31, F. A., 1940, s. 44, and F. A., 1950, s. 46.

²¹ For the meaning of "the United Kingdom", see the Government of Ireland (Adaptation of the Taxing Acts) Order, 1922, and the Irish Free State (Consequential Adaptation of Enactments) Order, 1923.

country or British possession²² in which the person to whom such debts are due resides, is insufficient for their payment.

(3) Where the Commissioners are satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of the United Kingdom,²¹ they may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

(4) Where any property passing on the death of the deceased is situate in a foreign country, and the Commissioners are satisfied that by reason of such death any duty is payable in that foreign country in respect of that property, they shall make an allowance of the amount of that duty from the value of the property.²³

(5) The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased²⁴;

Provided that, in the case of any agricultural property, where no part of the principal value is due to the expectation of an increased income from such property, the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A. of the Income Tax Acts, after making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding five per cent. of the annual value so assessed.²⁵

(6) Where an estate includes an interest in expectancy, Estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the Estate duty in respect of the rest of the estate, then—

- (a) for the purpose of determining the rate of Estate duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased; and
- (b) the rate of Estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

²² For adaptation of the words "in the foreign country or British possession", see the Government of Ireland (Adaptation of the Taxing Acts) Order, 1922.

²³ Amended by F. (No. 2) A., 1945, s. 54 (2).

²⁴ Extended by F. (1909-10) A., 1910, s. 60 (2), and F. A., 1911, s. 18.

²⁵ Proviso repealed, subject to exceptions, by F. (1909-10) A., 1910, ss. 60, 61, as to deaths after that Act.

(7) The value of the benefit accruing or arising from the cessation of an interest ceasing on the death of the deceased shall—

- (a) if the interest extended to the whole income of the property, be the principal value of that property; and
- (b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

(8) Subject to the provisions of this Act, the value of any property for the purpose of Estate duty shall be ascertained by the Commissioners in such manner and by such means as they think fit, and, if they authorise a person to inspect any property and report to them the value thereof for the purposes of this Act, the person having the custody or possession of that property shall permit the person so authorised to inspect it at such reasonable times as the Commissioners consider necessary.

(9) Where the Commissioners require a valuation to be made by a person named by them, the reasonable costs of such valuation shall be defrayed by the Commissioners.

(10) Property passing on any death shall not be aggregated more than once, nor shall Estate duty in respect thereof be more than once levied on the same death.

8.—(1) The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act and so far as the same are applicable, apply for the purposes of the collection, recovery, and repayment of Estate duty, and for the exemption of the property of common seamen marines or soldiers who are slain or die in the service of Her Majesty,²⁶ and for the purpose of payment of sums under one hundred pounds without requiring representation, as if such law and practice were in terms made applicable to this Part of this Act.

(2) Sections twelve to fourteen of the Customs and Inland Revenue Act, 1889, and section forty-seven of the Local Registration of Title (Ireland) Act, 1891, shall apply as if Estate duty were therein mentioned as well as Succession duty, and as if an account were not settled within the meaning of any of the above sections until the time for the payment of the duty on such account has arrived.

(3) The executor of the deceased shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the Inland Revenue affidavit all the property in respect of which Estate duty is payable upon the death of the deceased and shall be accountable for the Estate duty in respect of all

²⁶ Under Stamp Act, 1815, schedule, Part III. Exemption extended to airmen by Air Force (Application of Enactments) (No. 3) Order, 1918.

personal property wheresoever situate of which the deceased was competent to dispose at his death, but shall not be liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received.²⁷

(4) Where property passes on the death of the deceased, and his executor is not accountable for the Estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the Estate duty on the property, and shall, within the time required by this Act or such later time as the Commissioners allow, deliver to the Commissioners and verify an account, to the best of his knowledge and belief, of the property: Provided that nothing in this section contained shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.²⁸

(5) Every person accountable for Estate duty, and every person whom the Commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate, shall, to the best of his knowledge and belief, if required by the Commissioners, deliver to them and verify a statement of such particulars together with such evidence as they require relating to any property which they have reason to believe to form part of an estate in respect of which Estate duty is leviable on the death of the deceased.²⁹

(6) A person who wilfully fails to comply with any of the foregoing provisions of this section shall be liable to pay one hundred pounds, or a sum equal to double the amount of the Estate duty, if any, remaining unpaid for which he is accountable, according as the Commissioners elect: Provided that the Commissioners, or in any proceeding for the recovery of such penalty the Court, shall have power to reduce any such penalty.²⁹

(7) Estate duty shall, in the first instance, be calculated at the appropriate rate according to the value of the estate as set

²⁷ Restricted by F. A., 1940, s. 54 (8).

²⁸ Restricted by F. A., 1940, s. 54 (8); modified (as to trustees in certain cases) by F. A., 1950, s. 44.

²⁹ Extended by F. A., 1940, s. 57.

forth in the Inland Revenue affidavit or account delivered, but if afterwards it appears that for any reason too little duty has been paid, the additional duty shall, unless a certificate of discharge has been delivered under this Act, be payable, and be treated as duty in arrear.

(8) The Commissioners on application from a person accountable for the duty on any property forming part of an estate shall, where they consider that it can conveniently be done, certify the amount of the valuation accepted by them for any class or description of property forming part of such estate.

(9) Where the Commissioners are satisfied that the Estate duty leviable in respect of any property cannot without excessive sacrifice be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent. or any higher interest yielded by the property, and on such terms, as the Commissioners think fit.

(10) . . .³⁰

(11) If after the expiration of twenty years from a death upon which Estate duty³¹ became leviable any such duty remains unpaid, the Commissioners may, if they think fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

(12) Where it is proved to the satisfaction of the Commissioners that too much Estate duty has been paid, the excess shall be repaid by them, and in cases where the over-payment was due to over-valuation by the Commissioners, with interest at three per cent. per annum.

(13) Where any proceeding for the recovery of Estate duty in respect of any property is instituted, the High Court shall have jurisdiction to appoint a receiver of the property and the rents and profits thereof, and to order a sale of the property.

(14) All affidavits, accounts, certificates, statements, and forms used for the purpose of this part of this Act shall be in such form, and contain such particulars, as may be prescribed, and if so required by the Commissioners shall be in duplicate, and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply with the provisions of this enactment shall be liable to the penalty above in this section mentioned.

³⁰ Repealed by F. A., 1896, s. 40, and schedule, Part III.

³¹ Extended to other "death duties" within s. 13 (3) of this Act by F. A., 1907, s. 13.

(15) No charge shall be made for any certificate given by the Commissioners under this Act.

(16) The Estate duty may be collected by means of stamps or such other means as the Commissioners prescribe.

(17) The form of certificate required to be given by the proper officer of the Court under section thirty of the Customs and Inland Revenue Act, 1881, may be varied by a rule of court in such manner as may appear necessary for carrying into effect this Act.

(18) Nothing in this section shall render liable to or accountable for duty a bona fide purchaser for valuable consideration without notice.

9.—(1) A rateable part of the Estate duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which duty is leviable; provided that the property shall not be so chargeable as against a bona fide purchaser thereof for valuable consideration without notice.³²

(2) On an application submitting in the prescribed form the description of the lands or other subjects of property (whether hereditaments, stocks, funds, shares, or securities), and of the debts and incumbrances allowed by the Commissioners in assessing the value of the property for the purposes of Estate duty, the Commissioners shall grant a certificate of the Estate duty paid in respect of the property, and specify the debts and incumbrances so allowed, as well as the lands or other subjects of property.

(3) Subject to any repayment of Estate duty arising from want of title to the land or other subjects of property, or from the existence of any debt or incumbrance thereon for which under this Act an allowance ought to have been but has not been made, or from any other cause, the certificate of the Commissioners shall be conclusive evidence that the amount of duty named therein is a first charge on the lands or other subjects of property after the debts and incumbrances allowed as aforesaid: Provided that any such repayment of duty by the Commissioners shall be made to the person producing to them the said certificate.

(4) If the rateable part of the Estate duty in respect of any property is paid by the executor, it shall where occasion requires be repaid to him by the trustees or owners of the property, but if the duty is in respect of real property, it may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are in this Act mentioned.

(5) A person authorised or required to pay the Estate duty in respect of any property shall, for the purpose of paying the duty, or raising the amount of the duty when already paid, have

³² See also F. A., 1940, s. 54 (8).

power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof.

(6) A person having a limited interest in any property, who pays the Estate duty in respect of that property, shall be entitled to the like charge, as if the Estate duty in respect of that property had been raised by means of a mortgage to him.

(7) Any money arising from the sale of property comprised in a settlement, or held upon trust to lay out upon the trusts of a settlement, and capital money arising under the Settled Land Act, 1882, may be expended in paying any Estate duty in respect of property comprised in the settlement and held upon the same trusts.

10.—(1) Any person aggrieved by the decision of the Commissioners with respect to the repayment of any excess of duty paid, or by the amount of duty claimed by the Commissioners, whether on the ground of the value of any property³³ or the rate charged or otherwise, may, on payment of, or giving security as herein-after mentioned for, the duty claimed by the Commissioners or such portion of it as is then payable by him, appeal to the High Court³⁴ within the time and in the manner and on the conditions directed by rules of Court³⁵, and the amount of duty shall be determined by the High Court, and if the duty as determined is less than that paid to the Commissioners the excess shall be repaid.

(2) No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section except with the leave of the High Court or Court of Appeal.

(3) . . .³⁶

The Court, where it appears to the Court just, may order the Commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum for such period as appears to the Court just.

(4) Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the Commissioners or of such portion of it as is

³³ Appeals as to the value of real and leasehold property are now regulated by the Lands Tribunal Act, 1949, (except as to Scotland, where they are still governed by s. 33 of the F. (1909-10) A., 1910).

³⁴ In Scotland, the Court of Session (see s. 23 (1) below).

³⁵ In England, Rules of the Supreme Court (Finance Act), 1895 (see below, p. 368); in Scotland, Rules of the Court of Session, 1948, V., 297 (see below, p. 370).

³⁶ Words omitted repealed by Administration of Justice (Miscellaneous Provisions) Act, 1933, s. 10 (3), and Sched. III.

then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the Court seems reasonable, and on security to the satisfaction of the Court being given for the duty, or so much of the duty as is not so paid, but in such case the Court may order interest at the rate of three per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.

(5) Where the value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed ten thousand pounds, the appeal under this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such county court were the High Court³⁷: [Provided that in every such case any party shall have a right of appeal to Her Majesty's Court of Appeal³⁸].

(6) The county council of every county or county borough in Great Britain, shall, within twelve months after the commencement of this Act, and may thereafter from time to time, appoint a sufficient number of qualified persons to act as valuers for the purposes of this Act in their respective counties, and shall fix a scale of charges for the remuneration of such persons, and the Court may refer any question of disputed value under this section to the arbitration of any person so appointed for the county in which the appellant resides or the property is situate; and the costs of any such arbitration shall be part of the costs of the appeal.

Discharge from and Apportionment of Duty

11.—(1) The Commissioners on being satisfied that the full Estate duty has been or will be paid in respect of an estate or any part thereof shall, if required by the person accounting for the duty, give a certificate to that effect, which shall discharge from any further claim for Estate duty the property shown by the certificate to form the estate or part thereof as the case may be.

(2) Where a person accountable for the Estate duty in respect of any property passing on a death applies after the lapse of two years³⁹ from such death to the Commissioners, and delivers to them and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the Commissioners may determine the rate of the Estate duty in respect of the property for which the applicant is accountable, and on payment of the duty at that

³⁷ The relative rules are as follows:—England, County Court Rules, Order XLVI, r. 4; Scotland (see s. 23 (2) of this Act), Rules of the Court of Session, 1948, r. 297.

³⁸ Words in square brackets added by F. A., 1896, s. 22.

³⁹ The Commissioners may entertain an earlier application: F. A., 1907, s. 14.

rate, that property and the applicant so far as regards that property shall be discharged from any further claim for Estate duty, and the Commissioners shall give a certificate of such discharge.

(3) A certificate of the Commissioners under this section shall not discharge any person or property from Estate duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for;

(4) Provided nevertheless that a certificate purporting to be a discharge of the whole Estate duty payable in respect of any property included in the certificate shall exonerate a bona fide purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

12. The commissioners in their discretion, upon application by a person entitled to an interest in expectancy, may commute the Estate duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at three per cent.; and on the receipt of such sum they shall give a certificate of discharge accordingly.

13.—(1) Where, by reason of the number of deaths on which property has passed or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of death duties or any of them payable in respect of any property or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Commissioners on the application of any person accountable for any duty thereon, and upon his giving to them all the information in his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may by way of composition for all or any of the death duties payable in respect of the property, or interest, and the various interests therein, or any of them, assess such sum on the value of the property, or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed, in full discharge of all claims for death duties in respect of such property or interest, and shall give a certificate of discharge accordingly;

(2) Provided that the certificate shall not discharge any

person from any duty in case of fraud or failure to disclose material facts.

(3) In this section the expression "death duties" means the Estate duty under this Act, the duties mentioned in the First Schedule to this Act . . .⁴⁰, and the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881.

14.—(1) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the Estate duty may be recovered by the person, who being authorised or required to pay the Estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise,) under a disposition not containing any express provision to the contrary.

(2) Any dispute as to the proportion of Estate duty to be borne by any property or person, may be determined upon application by any person interested in manner directed by rules of Court, either by the High Court, or, where the amount in dispute is less than fifty pounds, by a county court for the county or place in which the person recovering the same resides, or the property in respect of which the duty is paid is situate.⁴¹

(3) Any person from whom a rateable part of Estate duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioners.

15.—(1) Estate duty shall not be payable in respect of a single annuity not exceeding twenty-five pounds purchased or provided by the deceased, either by himself alone or in concert or arrangement with any other person, for the life of himself and of some other person and the survivor of them, or to arise on his own death in favour of some other person; and if in any case there is more than one such annuity, the annuity first granted shall be alone entitled to the exemption under this section.⁴²

(2) It shall be lawful for the Treasury to remit the Estate duty, or any other duty leviable on or with reference to death, in respect of any such pictures, prints, books, manuscripts, works of art or scientific collections, as appear to the Treasury to be of national, scientific, or historic interest, and to be given or bequeathed for national purposes, or to any university, or to any county council or municipal corporation, and no property the duty in respect of which is so remitted shall be aggregated with any other property for the purpose of fixing the rate of Estate duty.

(3) Estate duty shall not be payable in respect of any pension

⁴⁰ Words omitted ("and the legacy and succession duties") deleted by F. A., 1949, s. 52 (10) and Eleventh Schedule.

⁴¹ See Rules of the Supreme Court, Order LV, r. 9c.

⁴² Amended by F. A., 1935, s. 33.

or annuity payable by the Government of British India to the widow or child of any deceased officer of such Government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid.

(4) Estate duty shall not be payable in respect of any advowson or church patronage . . .⁴³

Small Estates

16.—(1) The provisions of [section thirty-three⁴⁴] of the Customs and Inland Revenue Act, 1881 (relating to the obtaining of representation to the deceased where the gross value of his personal estate does not exceed three hundred pounds), shall apply with the necessary modifications to the case where the gross value of the property real and personal in respect of which Estate duty [would, if Estate duty were payable in respect of estates however small the principal value thereof, be payable on the death of the deceased⁴⁵], exclusive of property settled otherwise than by the will of the deceased, does not exceed five hundred pounds.⁴⁵ . . .

(2) All such property may be comprised in the notice under the said section thirty-three.

[(3) Where the net value of the property, real and personal, in respect of which Estate duty would, if Estate duty were payable in respect of estates however small the principal value thereof, be payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed two thousand pounds, such property, for the purpose of Estate duty, shall not be aggregated with any other property, but shall form an estate by itself . . .⁴⁶]

⁴³ Words omitted deleted by F. A., 1949, s. 52 (10) and Eleventh Schedule.

⁴⁴ Words in square brackets substituted by F. A., 1946, Sched. X, Part III, as to deaths on or after April 10, 1946.

⁴⁵ Remainder of this sub-section repealed by F. A., 1946, Sched. X, Part III, as to deaths on or after April 10, 1946.

⁴⁶ This sub-section was re-enacted as above as to deaths on or after April 10, 1946, by the F. A., 1946, s. 46 (c) and Tenth Schedule, Part III, para. 3 (but reading "one thousand pounds" for "two thousand pounds" substituted by the F. A., 1947, s. 50 (1) as regards deaths on or after April 16, 1947, and with the addition of the words "and the legacy and succession duties shall not be payable under the will or intestacy of the deceased in respect of that estate", repealed by the F. A., 1949, s. 52 (10) and Eleventh Schedule as to deaths on or after July 30, 1949). The original sub-section read as follows:—

"(3) Where the net value of the property, real and personal, in respect of which Estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed one thousand pounds, such property, for the purpose of Estate duty, shall not be aggregated with any other property, but shall form an estate by itself; and where the fixed duty or Estate duty has been paid upon the principle value of that estate, the settlement Estate duty and the Legacy and Succession duties shall not be payable under the will or intestacy of the deceased in respect of that estate."

(4) . . . ⁴⁷.(5) . . . ⁴⁸.*Rates of Estate Duty*

17. The rates of Estate duty shall be according to the following scale ⁴⁹ :—

Where the Principal Value of the Estate				Estate Duty shall be payable at the Rate per cent. of
Exceeds	£		£	
	100 and does not exceed		500	One pound.
"	500	"	1,000	Two pounds.
"	1,000	"	10,000	Three pounds.
"	10,000	"	25,000	Four pounds.
"	25,000	"	50,000	Four pounds ten shillings.
"	50,000	"	75,000	Five pounds.
"	75,000	"	100,000	Five pounds ten shillings.
"	100,000	"	150,000	Six pounds.
"	150,000	"	250,000	Six pounds ten shillings.
"	250,000	"	500,000	Seven pounds.
"	500,000	"	1,000,000	Seven pounds ten shillings.
"	1,000,000	.. ..	.. ..	Eight pounds.

. . . ⁵⁰. . . ⁵¹*Succession Duty*18. . . . ⁵²*Local Taxation Grant*19. . . . ⁵³

⁴⁷ Repealed by the Supreme Court of Judicature (Consolidation) Act, 1925, s. 226 (1), and Schedule VI, as to the resealing in England of Irish grants made in respect of the estates or persons dying on or after April 1, 1923.

⁴⁸ This sub-section, repealed by F. A., 1946, s. 67 (11) as to deaths on or after April 10, 1946, read:—

"(5) Where the fixed duty of thirty or fifty shillings is paid within twelve months after the death of the deceased, interest on such duty shall not be payable."

⁴⁹ New scales were substituted by F. A., 1907, s. 30; F. (1909-10) A., 1910, s. 54; F. A., 1914, s. 12; F. A., 1919, s. 29; F. A., 1925, s. 22; F. A., 1930, s. 33; F. A., 1939, s. 29; F. (No. 2) A., 1939, s. 23; F. (No. 2) A., 1940, s. 16; F. A., 1946, s. 46; F. A., 1949, s. 28 (1).

⁵⁰ Repealed by F. A., 1914, s. 18 (1), and Sched. II.

⁵¹ Repealed by F. A., 1896, s. 40, and Schedule, Part III. It read as follows: "Provided that for any fractional part of ten pounds over ten pounds or any multiple thereof, the Estate duty and the Settlement Estate duty shall be payable at the rate per cent. for the full sum of ten pounds".

⁵² S. 18 repealed by F. A., 1949, s. 52 (10) and Eleventh Schedule as to deaths on or after July 30, 1949: it dealt with Succession Duty.

⁵³ Repealed by the Local Government Act, 1929, and the Local Government (Scotland) Act, 1929.

British Possessions

20.—(1) Where the Commissioners are satisfied, that in a British possession⁵⁴ to which this section applies, duty is payable by reason of a death in respect of any property situate in such possession and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the Estate duty payable in respect of that property on the same death.

(2) Nothing in this Act shall be held to create a charge for Estate duty on any property situate in a British possession, while so situate, or to authorise the Commissioners to take any proceedings in a British possession for the recovery of any Estate duty.

(3) Her Majesty the Queen may, by Order in Council, apply this section to any British possession, where her Majesty is satisfied that, by the law of such possession, either no duty is leviable in respect of property situate in the United Kingdom⁵⁵ when passing on death, or that the law of such possession as respects any duty so leviable is to the like effect as the foregoing provisions of this section.

(4) Her Majesty in Council may revoke any such Order, where it appears that the law of the British possession has been so altered that it would not authorise the making of an Order under this section.

Savings and Definitions

21.—(1) Estate duty shall not be payable on the death of a deceased person in respect of personal property settled by a will or disposition made by a person dying before the commencement of this Part of this Act, in respect of which property any duty mentioned in paragraphs one and two of the First Schedule to this Act, or the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881, has been paid or is payable, unless in either case the deceased was at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property.⁵⁶

(2) Where a person died before the commencement of this Part of this Act, the duties mentioned in the First Schedule to this Act shall continue to be payable in like manner in all respects as if this Act had not passed.

⁵⁴ Extended by Foreign Jurisdiction Act, 1913, and F. A., 1922, s. 45.

⁵⁵ For the meaning of "the United Kingdom", see the Government of Ireland (Adaptation of the Taxing Acts) Order, 1922, and the Irish Free State (Consequential Adaptation of Enactments) Order, 1923.

⁵⁶ Amended by F. (1909-10) A., 1910, s. 55, and F. A., 1914, s. 14.

(8) Where an interest in expectancy in any property has, before the commencement of this Part of this Act, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession, than would have been payable if this Act had not passed; and in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(4) . . .⁵⁷

(5) Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of this part of this Act, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, Estate duty shall not be payable in respect of that property until the death of the survivor.

22.—(1) In this Part of this Act, unless the context otherwise requires :—

- (a) The expressions “deceased person” and “the deceased” mean a person dying after the commencement of this Part of this Act :
- (b) The expression “will” includes any testamentary instrument :
- (c) The expression “representation” means probate of a will or letters of administration :
- (d) The expression “executor” means the executor or administrator of a deceased person, and includes, as regards any obligation under this Part of this Act, any person who takes possession of or intermeddles with the personal property of a deceased person :
- (e) The expression “Estate duty” means Estate duty under this Act :
- (f) The expression “property” includes real property and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale :
- (g) The expression “agricultural property” means agricultural land pasture and woodland, and also includes such cottages, farm buildings, farm houses, and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property :
- (h) The expression “settled property” means property comprised in a settlement :

⁵⁷ Repealed by F. A., 1914, s. 18 (1), and Schedule II. This sub-section dealt with Settlement Estate Duty.

- (i) The expression "settlement" means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of section two of the Settled Land Act, 1882,⁵⁸ or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust:
- (j) The expression "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases:
- (k) The expression "incumbrances" includes mortgages and terminable charges:
- (l) The expression "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death":
- (m) The expression "the Commissioners" means the Commissioners of Inland Revenue:
- (n) The "Inland Revenue affidavit" means an affidavit made under the enactments specified in the Second Schedule to this Act with the account and schedule annexed thereto:
- (o) The expression "prescribed" means prescribed by the Commissioners.
- (2) For the purposes of this Part of this Act—
 - (a) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were sui juris, enable him to dispose of the property, including a tenant in tail whether in possession or not; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exerciseable by instrument inter vivos or by will, or both, but exclusive of any power exerciseable in a fiduciary capacity under a disposition not made by himself, or exerciseable as tenant for life under the Settled Land Act, 1882,⁵⁹ or as mortgagee:
 - (b) A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by

⁵⁸ For which s. 38 of the Interpretation Act, 1889, substituted s. 1 of the Settled Land Act, 1925.

⁵⁹ As to the substitution of s. 1 of the Settled Land Act, 1925, see above, n. 58.

him, whether the concurrence of any other person was or was not required:

- (c) Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

(3) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate in dower or by the curtesy or any other like estate, in like manner as it applies to property settled by the will of the deceased.

Application to Scotland

23. In the application of this Part of this Act to Scotland unless the context otherwise requires:—

- (1) The Court of Session shall be substituted for the High Court:
- (2) "Sheriff court" shall be substituted for "county court":
- (3) "Confirmation" shall be substituted for "representation":
- (4) The expression "receiver of the property and of the rents and profits thereof", means a judicial factor upon the property:
- (5) The expression "Inland Revenue affidavit", means the inventory of the personal estate of a deceased now required by law, and includes an additional inventory:
- (6) The expression "on delivering the Inland Revenue affidavit", means on exhibiting and recording a duly stamped inventory as provided by section thirty-eight of the Probate and Legacy Duties Act, 1808:
- (7) Section thirty-four of the Customs and Inland Revenue Act, 1881, shall be substituted for section thirty-three of that Act, and the Acts referred to in such section thirty-four shall extend to an estate of a gross value not exceeding five hundred pounds, and an application under the said Acts may be made to any commissary clerk, and any commissary clerk shall affix the seal of the court to any representation granted in England or Ireland upon the same being sent to him for that purpose, enclosing a fee of two shillings and sixpence⁶⁰:
- (8) The expression "personal property" means moveable property:
- (9) The expression "real property" includes heritable property:

⁶⁰ S. 33 of the Customs and Inland Revenue Act, 1881, provided for payment of a fixed stamp duty of thirty shillings where the gross value of the personal estate of a person to whom a grant was obtained in England or Ireland did not exceed £300. S. 34 provided similarly as to Scottish cases.

- (10) The expression “incumbrance” includes any heritable security, or other debt or payment secured upon heritage :
- (11) The expression “executor” means every person who as executor, nearest of kin, or creditor, or otherwise, intromits with or enters upon the possession or management of any personal property of a deceased person :
- (12) The property comprised in any special assignation or disposition taking effect on death shall be deemed to pass on death within the meaning of this Act :
- (13) The expression “trustee” includes a tutor, curator, and judicial factor :
- (14) The expression “settled property” shall not include property held under entail :
- (15) An institute or heir of entail in possession of an entailed estate shall whether sui juris or not be deemed for the purposes of this Act to be a person competent to dispose of such estate :
[Provided that for the purposes of section eighteen of this Act such institute or heir of entail shall not be deemed to be a person competent to dispose of such estate, unless he is entitled to disentail it without obtaining the consent of any subsequent heir of entail, or having the consent of any subsequent heir valued and dispensed with ⁶¹ :]
- (16) Where an entailed estate passes on the death of the deceased to an institute or heir of entail, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, settlement Estate duty as well as Estate duty shall be paid in respect of such estate, but neither Estate duty nor settlement Estate duty shall be payable again in respect of such estate, until such estate is disentailed, or until an heir of entail to whom it passes on or subsequent to the death of the institute or heir first mentioned, and who is entitled to disentail it without obtaining the consent of any subsequent heir or heirs or having the consent of any subsequent heir or heirs valued and dispensed with, dies ⁶² :
- (17) Where an institute or heir of entail in possession of an entailed estate, who is not entitled to disentail such estate without either obtaining the consent of one or

⁶¹ Words in square brackets added by F. A., 1896, s. 23.

⁶² Amended by F. A., 1914, s. 14.

more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, has paid Estate duty in respect of such estate, and afterwards disentails such estate, he shall be entitled to deduct from the value in money of the expectancy or interest in such estate of such one or more subsequent heirs, payable by him to them in respect of their consents having been granted or dispensed with, a proper rateable part of the Estate duty paid by him as aforesaid :

- (18) Where any person who pays Estate duty on any property, and in whom the property is not vested, is by this Act authorised to raise such duty by the sale or mortgage of that property, or any part thereof, it shall be competent for such person to apply to the Court of Session—

- (a) for an order of sale of the property or part of it, and in the event of the court granting such order, it shall provide for the payment out of the price of the amount of the Estate duty which has been paid by such person, and the court shall thereafter make such order as to the disposal of the surplus, if any, of the price by way of investment or otherwise, as to the court shall seem proper; the court may in such order specify the time and place at which, the person by whom, and the advertisement or notice after which the sale shall be made, and may ordain the person in whom the property is vested to grant a disposition thereof in favour of the purchaser, and if the person in whom the property is vested refuses or fails to do so, the court shall grant authority to the clerk of court to execute such disposition, and such disposition so executed shall be as valid as if it had been executed by the person in whom the property is vested; or
- (b) for an order ordaining the person in whom the property is vested to grant a bond and disposition in security over the property in favour of the person who has paid the Estate duty, for the amount of the said duty, and if the person in whom the property is vested refuses, or fails to do so, the court shall grant authority to the clerk of court to execute such a bond and disposition in security, and such bond and disposition in security so executed shall be as valid as if it had been executed by the person in whom the

property is vested, and shall be a first charge upon the property after any debt or incumbrance for which an allowance is directed to be made under this Act in determining the value of the property for the purpose of Estate duty ;

Provided also that summary diligence shall not be competent thereupon, and that nothing herein contained shall make the duty to be recovered by the methods of these sub-sections (a) and (b) recoverable at any earlier time than if it had been recovered by direct action against the person ultimately liable for the duty.

- (19) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate of terce or courtesy or any other like estate in like manner as it applies to property settled by the will of the deceased.

Commencement

24. This Part of this Act shall come into operation on the expiration of the first day of August one thousand eight hundred and ninety-four, in this Part of this Act referred to as the commencement of this Part of this Act.

Short Title

42. This Act may be cited as the Finance Act, 1894.

SCHEDULES

Sects. 1, 5, 13, 21

FIRST SCHEDULE

EXISTING DUTIES REFERRED TO

1. The stamp duties imposed by the Customs and Inland Revenue Act, 1881, on the affidavit to be required and received from the person applying for probate or letters of administration in England or Ireland, or on the inventory to be exhibited and recorded in Scotland.

2. The stamp duties imposed by section 38 of the Customs and Inland Revenue Act, 1881, as amended and extended by section 11 of the Customs

and Inland Revenue Act, 1889, on the value of personal or moveable property to be included in accounts thereby directed to be delivered.

3. . . .⁶³

4. The temporary Estates duties imposed by sections 5 [. . .⁶⁴] of the Customs and Inland Revenue Act, 1889.

5. . . .⁶⁵

SECOND SCHEDULE

Sect. 22 (1) (n)

ACTS REFERRED TO

Session and Chapter	Title or Short Title	Section referred to
55 Geo. 3, c. 184 ..	The Stamp Act, 1815	Section thirty-eight.
56 Geo. 3, c. 56 ..	The Probate Duty (Ireland) Act, 1816.	Section one hundred and seventeen.
43 Vict. c. 14	The Customs and Inland Revenue Act, 1880.	Section ten.
44 & 45 Vict. c. 12 ..	The Customs and Inland Revenue Act, 1881.	Sections twenty-nine and thirty-two.

The Finance Act, 1896

(59 & 60 VICT. c. 28.)

[7th August 1896.]

PART IV

DEATH DUTIES

Estate Duty

14. Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed for the purpose

⁶³ Repealed by F. A., 1949, s. 52 (10) and Eleventh Schedule as to deaths on or after July 30, 1949, this paragraph was as follows :—

“ 3. The additional Succession duties imposed by section 21 of the Customs and Inland Revenue Act, 1888.”

⁶⁴ Words omitted (*viz.*, “ and 6 ”) repealed by F. A., 1949, s. 52 (10) and Eleventh Schedule as to deaths on or after July 30, 1949.

⁶⁵ Repealed by F. A., 1949, s. 52 (10) and Eleventh Schedule as to deaths on or after July 30, 1949, this paragraph was as follows :—

“ 5. The duty at the rate of one pound per cent. which would by virtue of the Acts in force relating to Legacy duty or Succession duty have been payable under the will or intestacy of the deceased, or under his disposition or any devolution from him under which respectively Estate duty has been paid, or under any other disposition under which Estate duty has been paid.”

of the principal Act to pass to the settlor on the death of any such other person after the commencement of this Part of this Act, by reason only that the settlor, being then in possession of the property as tenant for life, becomes, in consequence of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property.

15.—(1) Where by a disposition of any property an interest is conferred on any person other than the disposer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disposer or of any benefit to him by contract or otherwise, and the only benefit which the disposer retains in the said property is subject to such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person after the commencement of this Part of this Act, the property shall not be deemed for the purpose of the principal Act to pass by reason only of its reverter to the disposer in his lifetime.

(2) Where by a disposition of any property any such interest as above in this section mentioned is conferred on two or more persons, either severally or jointly, or in succession, this section shall apply in like manner as where the interest is conferred on one person.

(3) Provided that the foregoing sub-sections shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

(4) Where the deceased person was entitled by law to the rents and profits of real property (as defined by section one of the Succession Duty Act, 1858) of his wife, and has died in her lifetime, such property shall not be deemed for the purpose of the principal Act to pass on his death by reason of her then becoming entitled to the property in virtue of her former interest.

16. The Estate duty due in respect of any annuity or other definite annual sum, whether terminable or perpetual, referred to in section two (1) (d) of the principal Act, may, at the option of the person delivering the account, be paid by four equal yearly instalments, the first of which shall be due at the end of twelve months from the date of the death, and after the end of those twelve months interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly, but the duty for the time being unpaid, with interest to the date of payment, may be paid at any time.

17. . . .⁶⁶

⁶⁶ Repealed by F. A., 1900, s. 18, this section replaced s. 17 of the F. A., 1894, by providing for the ignoring of fractional amounts of £100, part of an estate, in calculating the amount of duty.

18.—(1) Simple interest at the rate of three per cent. per annum ⁶⁷ without deduction for income tax shall be payable upon all Estate duty from the date of the death of the deceased, or, where the duty is payable by instalments, or becomes due at any date later than six months after the death, from the date at which the first instalment of the duty becomes due, and shall be recoverable in the same manner as if it were part of the duty.

(2) The foregoing provision shall apply to the interest on all death duties as defined by section thirteen of the principal Act in like manner as if it were herein re-enacted and made applicable to those duties.

(3) The Commissioners of Inland Revenue may remit the interest on any of such death duties where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account.

19. . . .⁶⁸

20. . . .⁶⁹

21. Where on the death of a deceased person Estate duty becomes payable by a person in respect of any property passing under a settlement made by a will or disposition which took effect before the commencement of the principal Act, and before that commencement any duty mentioned in paragraphs three to five of the First Schedule to the principal Act has been paid or is payable under the same will or disposition on the capital value of the property, the Commissioners of Inland Revenue shall allow the duty so paid or payable as a deduction from the Estate duty to the extent to which it has been paid or is payable in respect of the property on which Estate duty is payable.⁷⁰

22. There shall be added to subsection five of section ten of the principal Act the following proviso : Provided that in every such case any party shall have a right of appeal to Her Majesty's Court of Appeal.

23. The Finance Act, 1894, shall be construed as if there were added in section twenty-three thereof, after sub-section fifteen, the following enactment :

Provided that for the purposes of section eighteen of this Act

⁶⁷ Increased to four per cent. by F. A., 1919, s. 30, but reduced to three per cent by F. A., 1933, s. 43, and to two per cent. by F. A., 1943, s. 27.

⁶⁸ S. 19 dealt with Settlement Estate duty, abolished by F. A., 1914.

⁶⁹ Section repealed by F. A., 1930, s. 53 (8), as to deaths on or after August 1, 1930.

⁷⁰ Extended by F. A., 1907, s. 15, but restricted, as to deaths on or after July 30, 1949, by F. A., 1949, s. 52 (10), which repealed paragraphs three to five of the First Schedule to F. A., 1894, except the reference in paragraph four to Temporary Estate Duty otherwise than on a succession.

such institute or heir of entail shall not be deemed to be a person competent to dispose of such estate, unless he is entitled to dis-entail it without obtaining the consent of any subsequent heir of entail, or having the consent of any subsequent heir valued and dispensed with.

24.—(1) Unless the context otherwise requires—

(a) this Part of this Act shall come into operation on the first day of July one thousand eight hundred and ninety-six, which day is in this Part of this Act referred to as the commencement of this Part of this Act; and

(b) the expression “deceased person” means a person dying after the commencement of this Part of this Act.

(2) Part I. of the Finance Act, 1894, is in this Act referred to as “the principal Act.”

PART VII

MISCELLANEOUS

89. * * * * *

Part Four of this Act shall be construed together with Part One of the Finance Act, 1894.

40.⁷¹ * * * * *

41. This Act may be cited as the Finance Act, 1896.

⁷¹ S. 40, repealed (with the Schedule) by the S. L. R. A., 1908 (but not so as to affect any repeal effected by s. 40), read thus:—

“The Acts mentioned in the schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned.”
Part III of the schedule related to death duties and read thus:—

“ Session and Chapter	Short Title	Extent of Repeal
31 & 32 Vict. c. 124 . .	The Inland Revenue Act, 1868.	In section nine, from ‘at the rate of four pounds’, to ‘as part thereof’.
57 & 58 Vict. c. 30 . .	The Finance Act 1894,	Section six, in subsection six, the words ‘at the rate of three per cent. per annum’, and the words ‘and shall form part of the estate duty’, and in subsection eight, the words ‘less income tax’. Section eight, subsection ten. Section seventeen, from ‘provided that’, to the end of the section.”

The Finance Act, 1898

(61 & 62 Vict. c. 10.)

[1st July 1898.]

PART V**ESTATE DUTIES**

13. Section five, sub-section two, of the Finance Act, 1894, shall be read and have effect as if the following words had been inserted at the end thereof, “and who if on his death subsequent limitations under the settlement take effect in respect of such property was sui juris at the time of his death or had been sui juris at any time while so competent to dispose of the property.”

14. Where in the case of a death occurring after the commencement of this Act Settlement Estate duty is paid in respect of any property contingently settled, and it is thereafter shown that the contingency has not arisen, and cannot arise, the said duty paid in respect of such property shall be repaid.

PART VI**MISCELLANEOUS**

17. This Act may be cited as the Finance Act, 1898.

The Finance Act, 1900

(63 & 64 Vict. c. 7.)

[9th April 1900.]

PART III**DEATH DUTIES**11. . . .⁷²

12.—(1) The exclusion enacted by the proviso to section four of the Finance Act, 1894, of property from aggregation shall in the case of every person dying after the passing of this Act cease

⁷² This section (amended by F. (1909–10) A., 1910, s. 59 (1) and F. A., 1914, s. 14 (c)) read as follows:—

“(1) In the case of every person dying after the thirty-first day of March nineteen hundred, property whether real or personal in which the deceased person or any other person had an estate or interest limited to cease on the death of the deceased shall, for the purpose of the Finance Act, 1894, and the Acts amending that Act, be deemed to pass on the

to have effect, except as regards property in which the deceased never had an interest.

Provided that where an interest in expectancy (within the meaning of Part I. of the Finance Act, 1894) in any property has before the passing of this Act been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed; and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(2) . . .⁷³

13.—(1) For the purpose of determining the rate and the amount of duty, the exclusion under section seventeen of the Finance Act, 1896, of any fraction from the principal value of the estate shall in the case of every person dying after the passing of this Act cease to have effect.

(2) The Commissioners of Inland Revenue may, if they think fit, accept a statement by or on behalf of any accountable person as a correction of any Inland Revenue affidavit or account within the meaning of Part I. of the Finance Act, 1894, for the purposes of that Act and the Acts amending that Act, without requiring that statement to be verified on oath.

14.⁷⁴—(1) Where any person dies from wounds inflicted, accident occurring, or disease contracted, within twelve months before death, while on active service against an enemy, whether on sea or land, and was, when the wounds were inflicted, the

death of the deceased, notwithstanding that that estate or interest has been surrendered, assured, divested, or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion in such property, unless that surrender, assurance, divesting, or disposition was bona fide made or effected twelve months before the death of the deceased, and bona fide possession and enjoyment of the property was assumed thereunder immediately upon the surrender, assurance, divesting, or disposition, and thenceforward retained to the entire exclusion of the person who had the estate or interest limited to cease as aforesaid, and of any benefit to him by contract or otherwise.

(2) This section shall inter alia apply to Scotland to the conveyance or discharge of any life rent in favour of the fiar, or to the propulsiion of the fee under any simple or tailzied destination.

It was repealed by s. 65 (8) of F. A., 1940, as to deaths on or after June 27, 1940.

⁷³ Subsection repealed by F. A., 1927, s. 57 (6), and Schedule VI, Part II. See F. A., 1907, s. 16, and F. A., 1927, s. 51.

⁷⁴ Extended by Death Duties (Killed in War) Act, 1914; F. (No. 2) A., 1915, s. 46; F. A., 1917, s. 29; F. A., 1918, s. 44; F. A., 1919, s. 31; F. A., 1921, s. 43; F. A., 1924, s. 38; F. A., 1940, s. 64; F. A., 1941, s. 46; and applied to Air Force by Air Force (Application of Enactments) (No. 3) Order, 1918.

accident occurred, or the disease was contracted, either subject to the Naval Discipline Act or subject to military law, whether as an officer, non-commissioned officer, or soldier, under Part V. of the Army Act, the Treasury may, if they think fit, on the recommendation of the Secretary of State or of the Admiralty, as the case requires, remit, or in the case of duty already paid repay, up to an amount not exceeding one hundred and fifty pounds in any one case, the whole or any part of the death duties (within the meaning of sub-section three of section thirteen of the Finance Act, 1894) leviable in respect of property passing upon the death of the deceased to his widow or lineal descendants if the total value for the purpose of Estate duty of the property so passing does not exceed five thousand pounds.

(2) This section shall take effect in the case of any person dying since the eleventh day of October one thousand eight hundred and ninety-nine.

18. . . .⁷⁵

PART VI

GENERAL

19. This Act may be cited as the Finance Act, 1900.

⁷⁵ S. 18 (repealed by S. L. R. A., 1908, but not so as to affect any repeal effected by s. 18) read thus :—

“The Acts specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.”
The Second Schedule read thus :—

“ Session and Chapter	Short Title	Extent of Repeal
57 & 58 Vict. c. 30 ..	The Finance Act, 1894.	Section four, from ‘or which under a disposition’ to ‘descendant of the deceased’, and from ‘but if any benefit’ to the end of the section, as respects persons dying after the passing of this Act.
59 & 60 Vict. c. 28 ..	The Finance Act, 1896.	Section seventeen as respects persons dying after the passing of this Act”.

The Finance Act, 1907

(7 EDW. 7, c. 13)

[9th August 1907.]

PART III

DEATH DUTIES

12. . . .⁷⁶

13. . . .⁷⁷

14. The Commissioners may, if they think fit, entertain any application made for the purpose of subsection (2) of section eleven of the principal Act (which relates to discharge from claims for Estate duty), at whatever time the application is made; and, as respects any application so entertained, the provisions of that subsection shall have effect notwithstanding that the application is made before the lapse of the two years mentioned in that subsection.

15. The deduction to be allowed under section twenty-one of the Finance Act, 1896, in respect of death duties previously paid on property on which Estate duty is payable shall, instead of being the amount of the duty paid or payable, be the amount which would have been payable on account of the duty if the duty were calculated on the value of the property on which Estate duty is payable: Provided that, if as respects any such deduction the person by whom the duty is payable requires the Commissioners, on the first delivery of his account, to calculate the deduction as if this section had not passed, the deduction shall be so calculated.

16. . . .⁷⁸

PART VII

GENERAL

30.—(1) The Acts specified in the Third Schedule to this Act

⁷⁶ Repealed by F. (1909–10) A., 1910, s. 96, except as respects persons dying before April 30, 1909, this section established a new scale of rates of E.D. shown in the First Schedule to this Act as regards deaths on or after April 19, 1907.

⁷⁷ Repealed in effect by F. A., 1949, s. 52 (10) and Eleventh Schedule.

⁷⁸ This section (repealed by F. A., 1927, s. 51, as to deaths on or after July 29, 1927) read thus:—

In the case of persons dying on or after the nineteenth day of April nineteen hundred and seven, any settled property which would, under subsection (2) of section twelve of the Finance Act, 1900, be aggregated with other property so as to enhance the rate of duty to the limited extent provided in that section, shall, for the purposes of the principal Act, instead of being so aggregated, be treated as an estate by itself.

are hereby repealed to the extent mentioned in the third column of that Schedule.⁷⁹

(2) * * * * *

Part III of this Act shall be construed together with the Finance Act, 1894.

* * * * *

(3) This Act may be cited as the Finance Act, 1907.

SCHEDULES

FIRST SCHEDULE ⁸⁰

Sect. 12

SCALE OF RATES OF ESTATE DUTY

Where the Principal Value of the Estate				Estate Duty shall be payable at the Rate per cent. of
Exceeds	£		£	
	100 and does not exceed		500	One pound.
"	500	"	1,000	Two pounds.
"	1,000	"	10,000	Three pounds.
"	10,000	"	25,000	Four pounds.
"	25,000	"	50,000	Four pounds ten shillings.
"	50,000	"	75,000	Five pounds.
"	75,000	"	100,000	Five pounds ten shillings.
"	100,000	"	150,000	Six pounds.
"	150,000	"	250,000	Seven pounds.
"	250,000	"	500,000	Eight pounds.
"	500,000	"	750,000	Nine pounds.
"	750,000	"	1,000,000	Ten pounds.
"	1,000,000	"	1,500,000	Ten pounds on one million, and eleven pounds on the remainder.
"	1,500,000	"	2,000,000	Ten pounds on one million, and twelve pounds on the remainder.
"	2,000,000	"	2,500,000	Ten pounds on one million, and thirteen pounds on the remainder.
"	2,500,000	"	3,000,000	Ten pounds on one million, and fourteen pounds on the remainder.
"	3,000,000	"	"	Ten pounds on one million, and fifteen pounds on the remainder.

⁷⁹ Both this subsection and the Third Schedule were repealed by S. L. R. A., 1927, but not so as to affect any repeal effected by s. 30.

⁸⁰ Repealed by F. (1909-10), A., 1910, s. 96. except as respects persons dying before April 30, 1909.

Sect. 80.

THIRD SCHEDULE

ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
* * 57 & 58 Vict. c. 30 ..	* * The Finance Act, 1894.	* * * The scale of the rates of Estate Duty in section 17, except as respects persons dying before the nineteenth day of April, nineteen hundred and seven.
* *	* *	* * *

The Finance (1909-10) Act, 1910

(10 EDW. 7 & 1 GEO. 5, c. 8.)

[29th April 1910.]

PART I

DUTIES ON LAND VALUES

33.—(1) Except as expressly provided in this Part of this Act, any person aggrieved may appeal within such time and in such manner as may be provided by rules made under this section against the first or any subsequent determination by the Commissioners of the total value or site value of any land; or against the amount of any assessment of duty under this Part of this Act; or against a refusal of the Commissioners to make any allowance or to make the allowance claimed, where the Commissioners have power to make such an allowance under this Part of the Act; or against any apportionment of the value of land or of duty or any assessment or apportionment of the consideration on any transfer or lease made by the Commissioners under this Part of this Act; or against the determination of any other matter which the Commissioners are to determine or may determine under this Part of this Act :

Provided that—

- (a) an appeal shall not lie against a provisional valuation made by the Commissioners of the total or site value of any land except on the part of a person who has made an objection to the provisional valuation in accordance with this Act; and
- (b) the original total value and the original site value and the site value as ascertained under any subsequent valuation shall be questioned only by means of an appeal against the determination by the Commissioners of that value where there is an appeal under this Act, and shall not be questioned in any case on an appeal against an assessment of duty.

(2) An appeal under this section shall be referred to such one of the panel of referees appointed under this Part of this Act as may be selected in manner provided by rules under this section. . . .⁸¹

(3) . . .⁸²

(4) . . .⁸³

(5) . . .⁸⁴

* * * * *

⁸¹ Remainder of sub-section repealed, as regards England, by Lands Tribunal Act, 1949, s. 10 (4), Second Schedule, as from January 1, 1950; it read thus:—

“and the decision of the referee to whom the matter is so referred shall be given in the form provided by rules under this section and shall, subject to appeal to the Court under this section, be final”.

⁸² Subsection repealed, as regards England, by Lands Tribunal Act, 1949, s. 10 (4) and Second Schedule, as from January 1, 1950. It read thus:—

“(3) The referee shall determine any matter referred to him in consultation with the Commissioners and the appellant, or any persons nominated by the Commissioners and the appellant respectively for this purpose, and may, if he thinks fit, order that any expenses incurred by the appellant be paid by the Commissioners, and that any such expenses incurred by the Commissioners be paid by the appellant.

“Any order of the referee as to expenses may be made a rule of the High Court.”

⁸³ Subsection (4) repealed, as regards England, as from January 1, 1950, by Lands Tribunal Act, 1950, s. 10 (4) and Second Schedule, read thus:—

“(4) Any person aggrieved by the decision of the referee may appeal against the decision to the High Court within the time and in the manner and on the conditions directed by Rules of Court (including conditions enabling the Court to require the payment of or the giving of security for any duty claimed); and subsections two, three, and four of section ten of the Finance Act, 1894, shall apply with reference to any such appeal:”

The Revenue Act, 1911, s. 7, enacts as follows: “It is hereby declared that the Commissioners of Inland Revenue, if dissatisfied with the decision of a referee, have under subsection (4) of section thirty-three of the principal Act a right of appeal to the High Court against the decision as persons aggrieved within the meaning of that provision”.

⁸⁴ Subsection (5) repealed, as regards England, as from January 1, 1950, by Lands Tribunal Act, 1950, s. 10 (4), and Second Schedule, read thus:—

“(5) Provision shall be made by rules under this section with respect to the time within which and the manner in which an appeal may be made to a referee under this section, and with respect to the mode in which the referee to whom any reference is to be made is to be selected, and with respect to the form in which any decision of a referee is to be given, and with respect to any other matter for which it appears necessary or expedient to provide in order to carry this section into effect.

“Those rules shall be made by the Reference Committee, subject to the approval of the Treasury.

“The Reference Committee for England shall consist of the Lord Chief Justice of England, the Master of the Rolls, and the President of the Surveyors' Institution.

“The Reference Committee for Scotland shall consist of the Lord President of the Court of Session, the Lord Justice Clerk, and the Chairman of the Scottish Committee of the Surveyors' Institution.”

34. . . .⁸⁵

42. In the application of this Part of this Act to Scotland, unless the context otherwise requires,—

(1) * * * * *

“Court of Session” shall be substituted for “High Court”: Provided that, for the purposes of appeals from the decisions of referees, the judges of the Court of Session named for the purpose of hearing appeals under the Valuation of Lands (Scotland) Acts shall be substituted for the High Court, subject to such regulations as may be prescribed by Act of Sederunt, and the appeal from such judges shall be to the House of Lords, and in sub-section (2), (3), and (4) of section ten of the Finance Act, 1894, as applied with reference to any such appeal the said judges shall be substituted for the High Court. “Sheriff Court” shall be substituted for “County Court,” and there shall be an appeal from the sheriff court to the said judges, whose decision in such case shall be final.

* * * * *

PART III

DEATH DUTIES

54. . . .⁸⁶

55. For the purpose of any claim to relief from Estate duty under subsection (2) of section five or subsection (1) of section twenty-one of the principal Act, in the case of persons dying on or after the thirtieth day of April nineteen hundred and nine, payment of or liability to duty, whether the payment was made or the liability attached before, on, or after that date, shall not be deemed to be a payment of or liability to duty in respect of settled property if the payment was made or the liability attached

⁸⁵ S. 34 repealed, as regards England, by Lands Tribunal Act, 1949, s. 10 (4) and Second Schedule, as from January 1, 1950. It read thus:—

“(1) Such number of persons, being persons who have been admitted Fellows of the Surveyors’ Institution, or other persons having experience in the valuation of land as may be appointed for England, Scotland, and Ireland, respectively, by the Reference Committee, shall form a panel of persons to act as referees for the purposes of this Part of this Act in England, Scotland, and Ireland, respectively, and persons having experience in the valuation of minerals shall be included in each panel.

“(2) There shall be paid out of moneys provided by Parliament to every referee appointed under this section such fees or remuneration as the Treasury direct.”

⁸⁶ Repealed by F. A., 1914, s. 18 (1), except as regards deaths before August 16, 1914, this section established a new scale of rates of E.D. shown in the First Schedule to the Act as regards deaths on or after April 30, 1909.

in respect of an interest in expectancy in any property on the death of a person other than the settlor.

56.⁸⁷—(1) The Commissioners may, if they think fit, on the application of any person liable to pay Estate duty or Settlement estate duty . . .⁸⁸ accept in satisfaction of the whole or any part of such duty [⁸⁹ any such real (including leasehold) property] as may be agreed upon between the Commissioners and that person.

(2) No stamp duty shall be payable on any conveyance or transfer of land to the Commissioners under this section.

(3) The Commissioners may hold any property transferred to them under this section and shall deal with it in such manner as Parliament may hereafter determine.

57. Where a debt or incumbrance has been incurred or created in whole or in part for the purpose of or in consideration for the purchase or acquisition or extinction, whether by operation of law or otherwise, of any interest in expectancy within the meaning of the principal Act in any property passing or deemed to pass on the death of a person dying after the passing of this Act, and any person whose interest in expectancy is so purchased, acquired, or extinguished becomes (under any disposition made by, or through devolution of law from, or under the intestacy of, the deceased) entitled to any interest in that property, then in determining the value of the estate of the deceased for the purpose of Estate duty no allowance shall be made in respect of such debt or incumbrance, and any property charged with any such debt or incumbrance shall be deemed to pass freed from that debt or incumbrance :

Provided that—

- (a) If part only of such debt or incumbrance was incurred or created for such purpose or as such consideration as aforesaid, this provision shall apply to that part of such debt or incumbrance only ; and
- (b) If a person whose interest in expectancy in the property so purchased, acquired, or extinguished becomes entitled to an interest in part only of that property, this provision shall apply only to such part of the debt or incumbrance as bears the same proportion to the whole debt or incumbrance as the value of the part of the property to an interest in which he becomes entitled bears to the value of the whole of that property.

58. . . .⁹⁰

⁸⁷ Extended by F. A., 1946, ss. 49-51, as amended by F. A., 1949, s. 52 (10).

⁸⁸ Words omitted repealed by F. A., 1949, s. 52 (10) and Eleventh Schedule.

⁸⁹ Words in square brackets substituted by F. A., 1946, s. 49, for "such part of the property".

⁹⁰ Section repealed by F. A., 1949, s. 52 (10) and Eleventh Schedule.

59.—(1) In the case of a person dying on or after the thirtieth day of April nineteen hundred and nine, the period preceding the death of the deceased before which a disposition purporting to operate as an immediate gift inter vivos must have been made, . . .⁹¹ in order that the property taken under the disposition, . . .⁹¹ may not be included as property passing on the death of the deceased, shall be [five]⁹² years instead of twelve months before the death, and accordingly paragraph (a) of subsection (2) of section thirty-eight of the Customs and Inland Revenue Act, 1881 (as amended by section eleven of the Customs and Inland Revenue Act, 1889, and applied by paragraph (c) of subsection (1) of section two of the principal Act), subsection (3) of section two of the principal Act, . . .⁹¹ shall be read as if [five]⁹² years were substituted for twelve months :

Provided that this section shall not apply to any gift inter vivos, . . .⁹¹ made . . .⁹² before the thirtieth day of April nineteen hundred and eight, or made or effected for public or charitable purposes.

(2) So much of paragraph (c) of subsection (1) of section two of the principal Act and this section as makes gifts inter vivos property which is deemed to pass on the death of the deceased, shall not apply to gifts which are made in consideration of marriage, or which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances, or which, in the case of any donee, do not exceed in the aggregate one hundred pounds⁹³ in value or amount.

(3) Where [property taken under such a disposition as aforesaid or affected by such a disposition or determination as is mentioned in section forty-three of the Finance Act, 1940⁹⁴] is deemed to be property passing on the death of the deceased by reason only that the property was not, as from the date of [the disposition or determination⁹⁴] retained to the entire exclusion of the deceased or a person who had an estate or interest limited to cease on the death of the deceased, and of any benefit to him by contract or otherwise, the property shall not be deemed to pass on the death of the deceased if subsequently, by means of the surrender of the benefit reserved or otherwise, it is enjoyed to the entire exclusion⁹⁵ of the deceased

⁹¹ Words omitted repealed by F. A., 1940, s. 65 (8), except as to deaths before June 27, 1940.

⁹² "Five" substituted for "three" by F. A., 1946, Sched. XI, as to deaths on or after April 10, 1946, subject to transitional provisions.

⁹³ Amended to five hundred pounds, subject to certain additional conditions, by F. A., 1949, s. 33.

⁹⁴ Words in square brackets substituted by F. A., 1940, s. 43 (4) as to deaths on or after June 27, 1940.

⁹⁵ Amended by F. A., 1950, s. 43 (2).

or such other person as aforesaid, and of any benefit to him by contract or otherwise, for such period preceding the death of the deceased as is provided by this section [or the said section forty-three⁹⁴].

60.—(1) In the case of any person dying on or after the thirtieth day of April nineteen hundred and nine, the proviso to subsection (5) of section seven of the principal Act (which relates to the estimation of the principal value of property for the purposes of Estate duty) shall cease to have effect.

(2) In estimating the principal value of any property under subsection (5) of section seven of the principal Act, in the case of any person dying on or after the thirtieth day of April nineteen hundred and nine, the Commissioners shall fix the price of the property according to the market price at the time of the death of the deceased, and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time :

Provided that where it is proved to the Commissioners that the value of the property has been depreciated by reason of the death of the deceased, the Commissioners in fixing the price shall take such depreciation into account.

(3) An appeal shall not lie under section ten of the principal Act, whether as originally enacted or as applied by any other enactment, where the question in dispute is a question of the value of any real (including leasehold) property, but, if any person is aggrieved by the decision of the Commissioners as to the value of any such property, he may appeal against the decision in manner prescribed by Part I of this Act, and the provisions as to appeals under that Part of this Act shall apply accordingly.

61.—(1) Notwithstanding anything in the last preceding section, the proviso to subsection (5) of section seven of the principal Act shall continue to apply to the valuation of property consisting of a tenancy from year to year, including any tenancy which is, or is deemed to be, subject to statutory conditions under the Land Law (Ireland) Acts, and for determining the gross value or the net value of property for the purpose of section sixteen of the principal Act.

(2) Where [it is claimed for the purposes of subsection (1) of section sixteen of the principal Act that the gross value of any property does not exceed five hundred pounds⁹⁶] and such property includes property which is proved to the satisfaction of the Commissioners to be subject to a charge created for the purpose of securing unpaid purchase money, or money borrowed

⁹⁶ Words in square brackets substituted by F. A., 1946, Schedule X. Part III, as to deaths on or after April 10, 1946.

for the purpose of paying purchase money, or to be subject to or liable to be made subject to a charge for securing an advance made or to be made for the purpose of the purchase thereof, the value thereof for the purpose of determining the gross value of the property under the said section shall be taken to be its value subject to such charge or liability as aforesaid.

(3) Land subject to an annuity under the Land Purchase (Ireland) Acts shall be treated as real property for the purposes of subsection (8) of section six of the principal Act (relating to the payment of Estate duty by instalments).

(4) Where the property passing on the death of a person dying after the passing of this Act comprises the purchase money of land agreed to be sold under the Land Purchase (Ireland) Acts, but the purchase money has not been paid, the Estate duty payable in respect of that purchase money may, at the option of the person liable to pay the same, be postponed until the purchase money is actually paid, and shall then become payable, but the person liable to pay the duty shall in the meantime pay annually interest on the amount of the duty payable at the rate of three per cent. per annum.

(5) [Where an estate, in respect of which Estate duty is payable on the death of a person dying on or after the thirtieth day of April nineteen hundred and nine, comprises land on which timber, trees, wood, or underwood are growing, the value of such timber, trees, wood, or underwood shall not be taken into account in estimating the principal value of the estate or the rate of Estate duty, and estate duty shall not be payable thereon, but shall, at the rate due to the principal value of the estate, be payable on the net moneys (if any) after deducting all necessary outgoings since the death of the deceased, which may from time to time be received from the sale of timber, trees, or wood when felled or cut during the period which may elapse until the land, on the death of some other person, again becomes liable or would, but for this subsection, have become liable to Estate duty, and the owners or trustees of such land shall account for and pay the same accordingly as and when such moneys are received, with interest at the rate of three per cent. per annum from the date when such moneys are received.⁹⁷]

Provided that if at any time the timber, trees, or wood are sold, either with or apart from the land on which they are

⁹⁷ The paragraph in square brackets was substituted for the original paragraph by F. A., 1912, s. 9.

growing, the amount of Estate duty on the principal value thereof which, but for this subsection, would have been payable on the death of the deceased, after deducting the amount (if any) of Estate duty paid in respect of the timber, trees, or wood under this subsection since that date, shall become payable.

* * * * *

63. . . .⁹⁹

64.¹ Where an interest in expectancy within the meaning of Part I of the principal Act in any property has, before the thirtieth day of April nineteen hundred and nine, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

PART VIII

GENERAL

94. If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.

96.—(1) The Acts specified in the Sixth Schedule to this Act are hereby repealed to the extent mentioned in the Third column of that Schedule.²

(2) Any reference to “the Commissioners” in Part II., Part VI., or Part VII. of this Act shall be construed as a reference

⁹⁸ Omitted paragraph repealed by F. A., 1949, s. 52 (10) and Eleventh Schedule.

⁹⁹ Repealed by F. A., 1930, s. 53 (8), and Schedule III, Part IV, as to deaths on or after August 1, 1930.

¹ Repealed, in so far as relating to s. 54 of this Act, by F. (No. 2) A., 1940, s. 42 (8) and replaced by F. (No. 2) A., 1940, s. 17.

² Both this subsection and the Sixth Schedule were repealed by the S. L. R. A., 1927, but not so as to affect any repeal effected by s. 96 (1).

to the Commissioners of Customs and Excise, and any reference to “the Commissioners” in any other Part of this Act shall be construed as a reference to the Commissioners of Inland Revenue.

(3) Part III. of this Act shall be construed together with the Finance Act, 1894.

* * * * *

(7) This Act may be cited as the Finance (1909–10) Act, 1910.

SCHEDULES

Sect. 54.

SECOND SCHEDULE ³

SCALE OF RATES OF ESTATE DUTY

Where the Principal Value of the Estate				Estate Duty shall be payable at the Rate per cent. of
Exceeds	£		£	
	100 and does not exceed		500	1
„	500	„	1,000	2
„	1,000	„	5,000	3
„	5,000	„	10,000	4
„	10,000	„	20,000	5
„	20,000	„	40,000	6
„	40,000	„	70,000	7
„	70,000	„	100,000	8
„	100,000	„	150,000	9
„	150,000	„	200,000	10
„	200,000	„	400,000	11
„	400,000	„	600,000	12
„	600,000	„	800,000	13
„	800,000	„	1,000,000	14
„	1,000,000	.. ..	.. ..	15

³ Repealed by F. A., 1914, s. 18 (1), and Schedule II, as to deaths on or after August 16, 1914.

SIXTH SCHEDULE ⁴

Sect. 96

ENACTMENTS REPEALED

Session and Chapter	Title or Short Title	Extent of Repeal
* * 36 Geo. 3, c. 52 ..	* * The Legacy Duty Act, 1796.	* * * In section fourteen, so far as it applies to objects which appear to the Treasury to be of national, scientific, historic, or artistic interest, the words from "and given to" to "persons in succession"; the word "so", where it secondly occurs; the words from "not having any power" to "property yielding an income"; the words from "or shall come" to "having an absolute interest therein"; the word "same", where it fifthly occurs; the words from "as if the same had been" to "or dispose thereof"; and the words from "or who shall have" to "an absolute interest therein". * * *
* * 16 & 17. Vict. c. 51	* * The Succession Duty Act, 1853.	* * * Section twenty-three, except as respects persons dying before the passing of this Act. * * *
* * 59 & 60 Vict. c. 28	* * The Finance Act, 1896.	* * * In section twenty, the words from "and is settled" to "by different persons"; the words "by a person not competent to dispose of the same"; the words "or is in the possession of some person who is then competent to dispose of the same"; the words "and also the person being in possession and competent to dispose of the same"; and the words from "and in the case" to the end of the section, except as respects persons dying before the thirtieth day of April nineteen hundred and nine. * * *
* * 7 Edw. 7, c. 18 ..	* * The Finance Act, 1907.	* * * In section two, the word "tobacco"; and section twelve, and the First Schedule, except as respects persons dying before the thirtieth day of April nineteen hundred and nine. * * *
* *	* *	* *

⁴ Repealed by S. L. R. A., 1927, but not so as to affect any repeal effected by this Schedule.

The Finance Act, 1911

(1 & 2 GEO. 5, c. 48.)

[16th December 1911.]

PART V

DEATH DUTIES

18. It is hereby declared that, in estimating for the purposes of subsection (5) of section seven of the Finance Act, 1894, the principal value of any agricultural property which comprises cottages occupied by persons employed solely for agricultural purposes in connexion with the property, no account shall be taken of any value attributable to the fact that the cottage is suitable for the residential purposes of any persons other than agricultural labourers or workmen on the estate.

PART VI

GENERAL

22. * * * * * *

(3) This Act may be cited as the Finance Act, 1911.

The Finance Act, 1912

(2 & 3 GEO. 5, c. 8.)

[7th August 1912.]

PART III

INLAND REVENUE (MISCELLANEOUS)

9. Where an estate, in respect of which Estate duty is payable on the death of a person dying on or after the thirtieth day of April nineteen hundred and nine, comprises land on which timber, trees, wood, or underwood are growing, the value of such timber, trees, wood, or underwood shall not be taken into account in estimating the principal value of the estate or the rate of Estate duty, and Estate duty shall not be payable thereon, but shall, at the rate due to the principal value of the estate, be payable on the net moneys (if any), after deducting all necessary outgoings since the death of the deceased, which may from time to time be received from the sale of timber, trees, or wood when felled or cut during the period which may elapse until the land, on the death of some other person, again becomes liable or would, but for this subsection, have become liable to Estate duty, and the owners or trustees of such land shall account for and pay the same accordingly, as and when

such moneys are received, with interest at the rate of three per cent. per annum from the date when such moneys are received.

This section shall take effect in substitution for the first paragraph of subsection five of section sixty-one of the Finance (1909-10) Act, 1910, [and that paragraph and section nineteen of the Finance Act, 1911, are hereby repealed ⁵].

PART V

GENERAL

13. * * * * * *

(2) This Act may be cited as the Finance Act, 1912.

The Finance Act, 1914

(4 & 5 GEO. 5, c. 10)

[31st July 1914.]

PART III

DEATH DUTIES

12. The scale set out in the First Schedule to this Act shall, in the case of persons dying after the fifteenth day of August, nineteen hundred and fourteen, be substituted for the scale of rates of Estate duty set out in the Second Schedule to the Finance (1909-10) Act, 1910, as the scale of rates of Estate duty.⁶

13.—(1) The amount of Estate duty payable on an estate at the rate applicable thereto under the scale of rates of duty shall, where necessary, be reduced so as not to exceed the highest amount of duty which would be payable at the next lower rate, with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty would be so payable at the lower rate.

* * * * * *

14. Any relief from the payment of Estate duty given by subsection (2) of section five, or by subsection (1) of section twenty-one of the Finance Act, 1894 (which relate to settled property), or by subsection (16) of section twenty-three of that Act (which relates to entailed estates in Scotland) shall cease in the case of any person dying after the fifteenth day of August,

⁵ Words in square brackets repealed by S. L. R. A., 1927.

⁶ Replaced as to deaths on or after July 31, 1919, by F. A., 1919, s. 29 and Schedule III.

nineteen hundred and fourteen, and Settlement Estate duty shall not be levied in the case of persons dying after the eleventh day of May, nineteen hundred and fourteen:

Provided that—

- (a) nothing in this section shall affect the relief given by the above-mentioned provisions of the Finance Act, 1894, in cases where, before or after the passing of this Act, Estate duty has been paid or any of the duties specified in subsection (1) of section twenty-one of that Act have, either before or after the passing of this Act, been paid or are payable upon the death of one of the parties to a marriage, so far as respects the payment of Estate duty on the death of the other party to the marriage; and
- (b) on the first occasion on which Estate duty becomes payable in respect of any property which would not have been payable but for this section, the amount of Settlement Estate duty, if any, which has been paid in respect of that property, shall be allowed against the amount of Estate duty payable on that occasion, and if it exceeds that amount, the excess shall be repaid to the estate, and in addition, a sum equal to simple interest on the said amount of Settlement Estate duty calculated at the rate of three per cent. per annum from the fifteenth day of August, nineteen hundred and fourteen, up to the date of the occasion shall be paid to the several persons or their representatives who would have been entitled to the income arising from that amount, if that amount had on the fifteenth day of August, nineteen hundred and fourteen, been added to the capital of the settled property and shall be divided amongst those persons or their representatives according to the several interests they would have had in that income; and
- (c) Section eleven of the Finance Act, 1900, as amended by section fifty-nine of the Finance (1909–10) Act, 1910, shall not operate on any such surrender, assurance, divesting, or disposition as is mentioned in the said section eleven made by any person between the fifteenth day of August, nineteen hundred and fourteen, and the first day of April, nineteen hundred and fifteen, so as to make any Estate duty payable on the death of that person which would not have been payable but for this section.⁷

⁷ And see F. A., 1940, s. 43 (5).

15. Where the Commissioners of Inland Revenue are satisfied that Estate duty has become payable on any property consisting of land or a business (not being a business carried on by a company), or any interest in land or such a business, passing upon the death of any person, and that subsequently within five years Estate duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the amount of Estate duty payable on the second death (if that death occurs after the passing of this Act) in respect of the property so passing shall be reduced as follows:—

Where the second death occurs within one year of the first death, by fifty per cent.;

Where the second death occurs within two years of the first death, by forty per cent.;

Where the second death occurs within three years of the first death, by thirty per cent.;

Where the second death occurs within four years of the first death, by twenty per cent.;

Where the second death occurs within five years of the first death, by ten per cent.:

Provided that where the value, on which the duty is payable, of the property on the second death exceeds the value, on which the duty was payable, of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

16. Where an interest in expectancy within the meaning of Part I of the Finance Act, 1894, in any property has, before the eleventh day of May, nineteen hundred and fourteen, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.⁸

PART V

MISCELLANEOUS

18.—(1) The enactments specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.⁹

⁸ Repealed, in so far as it relates to s. 12 of this Act, by F. (No. 2) A., 1940, s. 42 (8), and replaced by s. 17 thereof.

⁹ Repealed by S. L. R. A., 1927, but not so as to affect any repeal effected by s. 18.

(2) * * * * *

Part III. of this Act shall be construed together with the Finance Act, 1894.

(3) This Act may be cited as the Finance Act, 1914.

The SCHEDULES above referred to

Sect. 12

FIRST SCHEDULE

SCALE OF RATES OF ESTATE DUTY ¹⁰

Where the Principal Value of the Estate				Estate Duty shall be payable at the Rate per cent. of	Values below which the duty is reduced under s. 13 (1) of this Act ¹¹
Exceeds	£	and does not exceed	£		£ s. d.
	100		500	1	101 0 3
"	500	" "	1,000	2	505 2 1
"	1,000	" "	5,000	3	1,010 6 3
"	5,000	" "	10,000	4	5,052 1 8
"	10,000	" "	20,000	5	10,105 5 4
"	20,000	" "	40,000	6	20,212 15 4
"	40,000	" "	60,000	7	40,430 2 2
"	60,000	" "	80,000	8	60,652 3 6
"	80,000	" "	100,000	9	80,879 2 6
"	100,000	" "	150,000	10	101,111 2 3
"	150,000	" "	200,000	11	151,685 7 11
"	200,000	" "	250,000	12	202,272 14 7
"	250,000	" "	300,000	13	252,873 11 4
"	300,000	" "	350,000	14	303,488 7 6
"	350,000	" "	400,000	15	354,117 13 0
"	400,000	" "	500,000	16	404,761 18 2
"	500,000	" "	600,000	17	506,024 2 0
"	600,000	" "	800,000	18	607,317 1 6
"	800,000	" "	1,000,000	19	809,876 10 11
"	1,000,000	" "	" "	20	1,012,500 0 0

¹⁰ Replaced as to deaths on or after July 31. 1919, by F. A., 1919, s. 29, and Schedule III.

²¹ This column does not form part of the statute.

ENACTMENTS REPEALED

Session and Chapter	Short title	Statutes repealed
57 & 58 Vict. c. 30	The Finance Act, 1894.	Subsections (1) and (4) of section five; in section seventeen the words "the rate of the settlement estate duty where the property is settled shall be two per cent."; subsection (4) of section twenty-one.
10 Edw. 7 & 1 Geo. 5, c. 8.	The Finance (1909-10) Act, 1910.	Section fifty-four and the Second Schedule as respects persons dying after the fifteenth day of August, one thousand nine hundred and fourteen; section sixty-seven; in subsection (1) of section sixty-nine the words "not exceeding in the case of land one-eighth and in the case of houses one-twelfth part of the duty on an amount equal to the annual value"
* *	* *	* * *

The Death Duties (Killed in War) Act, 1914 ¹³

(4 & 5 GEO. 5, c. 76.)

[31st August 1914.]

1.—(1) Section fourteen of the Finance Act, 1900 (which relates to the remission of death duties in case of persons killed in war), shall have effect as respects the present war as if it applied to property passing to lineal ancestors as well as to property passing to the widow or lineal descendants, and as if the amount of the duty to be remitted or repaid under that section were, instead of the amount therein mentioned, the following amounts :—

- (a) Where the value for the purpose of Estate duty of the property passing to the widow, lineal descendants, or lineal ancestors does not exceed five thousand pounds,

¹² Repealed by S. L. R. A., 1927, but not so as to affect any repeal effected by that Schedule.

¹³ Amended and extended by F. (No. 2) A., 1915, s. 46; F. A., 1917, s. 29; F. A., 1918, s. 44; F. A., 1919, s. 31; F. A., 1921, s. 43; F. A., 1924, s. 38; F. A., 1940, s. 64; and F. A., 1941, s. 46. Applied to Air Force by Air Force (Application of Enactments) (No. 3) Order, 1918.

the whole of the death duties leviable in respect of that property; and

(b) Where the said value exceeds five thousand pounds—

- (i) in respect of the first five thousands pounds, the whole of the death duties; and
- (ii) so much of the duties leviable in respect of the remainder as exceeds the sum which, if accumulated at compound interest at the rate of three per centum per annum from the date of death with half-yearly rests would, at the expiration of the period of the normal expectation of life of a person of the age of the deceased at the time of death (calculated in accordance with the Tables of Mortality of Government Life Annuitants, 1912), amount to the whole of the duties so leviable.

(2) The benefits of the relief given by this section as respects the first five thousand pounds shall be apportioned rateably among the several persons who would otherwise bear the duties remitted or repaid according to the amounts which they would so bear and without regard to their respective rights of priority.

(3) Where the relief in respect of Estate duty afforded to the widow, lineal descendants, or lineal ancestors by section fifteen of the Finance Act, 1914, would be greater than that afforded to them in respect of Estate duty by this section, the relief in respect of Estate duty shall be that under the said section fifteen and not that under this section, but in other cases the relief afforded by the said section fifteen shall not apply to any Estate duty to which this section applies.

2.¹⁴—(1) Where the Commissioners of Inland Revenue are satisfied that Estate duty has become payable on any property passing on the death of any person to which section one of this Act applies, and that subsequently Estate duty has again become payable on the same property or any part thereof passing on the death of some other person to which section one of this Act applies, the whole of the Estate duty payable on such subsequent death in respect of the property so passing shall be remitted, or, in case the duty has been paid, repaid, and the property shall not be aggregated with any other property passing on such subsequent death for the purpose of determining the rate of Estate duty.

(2) This section shall apply whether or not on any such death

¹⁴ Amended by F. (No. 2) A., 1915, s. 46.

any property passes to the widow or lineal descendants or lineal ancestors of the deceased.

3. This Act may be cited as the Death Duties (Killed in War) Act, 1914.

The Finance (No. 2) Act, 1915

(5 & 6 GEO. 5, c. 89.)

[23rd December 1915.]

PART IV

GENERAL

47.¹⁵ The Treasury may, if they think fit, during the continuance of the present war and a period of twelve months thereafter, issue any securities which they have power to issue for the purpose of raising any money or any loan with a condition that neither the capital nor the interest thereof shall be liable to any taxation, present or future, so long as it is shown in manner directed by the Treasury that the securities are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom, and securities issued with such a condition shall be exempt accordingly.

51. * * * * * *

(3) This Act may be cited as the Finance (No. 2) Act, 1915.

The Finance Act, 1917

(7 & 8 GEO. 5, c. 31.)

[2nd August 1917.]

PART IV

DEATH DUTIES

29. Section fourteen of the Finance Act, 1900, as extended by the Death Duties (Killed in War) Act, 1914, . . . ¹⁶ shall apply in the case of a master or a member of the crew of a ship or a fishing boat dying, whether before or after the passing of this

¹⁵ Repealed by S. L. R. A., 1927, but not so as to affect the status of securities previously issued.

¹⁶ Words omitted repealed by F. A., 1949, s. 52 (10) and Eleventh Schedule.

Act, from causes arising out of the operations of the present war and within twelve months from the occurrence to which death is due, in like manner as it applies in the case of a person dying from such wounds, accident, or disease as are mentioned in the said section fourteen, with this qualification, that the Treasury shall act on the recommendation of the Board of Trade instead of on that of the Secretary of State or the Admiralty.

PART VII

GENERAL

38.—(1) * * * * *

Part IV. of this Act shall be construed together with the Finance Act, 1894.

(2) This Act may be cited as the Finance Act, 1917.

The Finance Act, 1918

(8 & 9 GEO. 5, c. 15.)

[30th July 1918.]

44. The Death Duties (Killed in War) Act, 1914 (which extends as respects the present war the relief from death duties given by section fourteen of the Finance Act, 1900), shall have effect, and shall be deemed always to have had effect, as though the references therein to lineal ancestors included references to brothers and sisters and the descendants of brothers and sisters of the deceased.

45. * * * * *

(8) This Act may be cited as the Finance Act, 1918.

The Finance Act, 1919

(9 & 10 GEO. 5, c. 32.)

[31st July 1919.]

PART III

DEATH DUTIES

29. The scale set out in the Third Schedule to this Act shall, in the case of persons dying after the commencement of this Act,

be substituted for the scale set out in the First Schedule to the Finance Act, 1914, as the scale of rates of Estate duty ¹⁷ :

. . . ¹⁸

* * * * *

30. Section eighteen of the Finance Act, 1896 (which determines the rate of interest on death duties), shall, in its application to interest accruing due after the commencement of this Act, have effect as though four per cent. were substituted for three per cent. as the rate of interest per annum.¹⁹

31. Section fourteen of the Finance Act, 1900 (which relates to the remission of death duties in case of persons killed in war), and any enactment amending or extending that section, shall, in their application to the present war, have effect and be deemed always to have had effect as though—

- (a) three years were substituted for twelve months wherever that expression occurs; and
- (b) in the said section fourteen the expression “wounds inflicted, accident occurring or disease contracted while on active service against an enemy” included wounds inflicted, accident occurring or disease contracted in the course of operations arising directly out of the present war, but after its termination.

PART V

GENERAL

38.—(1) * * * * *

Part III. of this Act shall be construed together with the Finance Act, 1894.

* * * * *

(2) This Act may be cited as the Finance Act, 1919.

* * * * *

¹⁷ Replaced as to deaths on or after June 30, 1925, by F. A., 1925, s. 22. and Schedule IV.

¹⁸ Proviso repealed by F. (No. 2) A., 1940, s. 42 (8) and replaced by s. 17 thereof.

¹⁹ Rate restored to three per cent by F. A., 1933, s. 43, except as respects interest accruing before April 26, 1933, and reduced to two per cent. by F. A., 1943, s. 27, as to interest accruing on or after April 13, 1943.

SCHEDULE

Sect. 29

THIRD SCHEDULE

SCALE OF RATES OF ESTATE DUTY ²⁰

Where the Principal Value of the Estate				Estate Duty shall be payable at the Rate per cent. of	<i>Values below which the duty is reduced under s. 18 (1) of the Finance Act, 1914</i> ²¹
	£		£		£ s. d.
Exceeds	100	and does not exceed	500	1	101 0 3
"	500	"	1,000	2	505 2 1
"	1,000	"	5,000	3	1,010 6 3
"	5,000	"	10,000	4	5,052 1 8
"	10,000	"	15,000	5	10,105 5 4
"	15,000	"	20,000	6	15,159 11 6
"	20,000	"	25,000	7	20,215 1 1
"	25,000	"	30,000	8	25,271 14 9
"	30,000	"	40,000	9	30,329 13 2
"	40,000	"	50,000	10	40,444 8 11
"	50,000	"	60,000	11	50,561 16 0
"	60,000	"	70,000	12	60,681 16 5
"	70,000	"	90,000	13	70,804 12 0
"	90,000	"	110,000	14	91,046 10 3
"	110,000	"	130,000	15	111,294 2 5
"	130,000	"	150,000	16	131,547 12 5
"	150,000	"	175,000	17	151,807 4 7
"	175,000	"	200,000	18	177,134 3 0
"	200,000	"	225,000	19	202,469 2 9
"	225,000	"	250,000	20	227,812 10 0
"	250,000	"	300,000	21	253,164 11 2
"	300,000	"	350,000	22	303,846 3 1
"	350,000	"	400,000	23	354,545 9 2
"	400,000	"	450,000	24	405,263 3 2
"	450,000	"	500,000	25	456,000 0 0
"	500,000	"	600,000	26	506,756 15 2
"	600,000	"	800,000	27	608,219 3 7
"	800,000	"	1,000,000	28	811,111 2 3
"	1,000,000	"	1,250,000	30	1,028,571 8 7
"	1,250,000	"	1,500,000	32	1,286,764 14 2
"	1,500,000	"	2,000,000	35	1,569,230 15 5
"	2,000,000	"	"	40	2,166,666 13 4

²⁰ Replaced by F. A., 1925, Schedule IV, as to deaths on or after June 30, 1925.

²¹ This column does not form part of the statute.

The Government of Ireland Act, 1920²²

(10 & 11 GEO. 5, c. 67.)

[23rd December 1920.]

FINANCIAL PROVISIONS

* * * * *

28.—(1) Where the Commissioners of Inland Revenue are satisfied that estate duty or any duty in the nature of estate duty is payable in Southern Ireland or Northern Ireland by reason of a death in respect of any property situated in Southern Ireland or Northern Ireland and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the estate duty payable in Great Britain in respect of that property on the same death.

(2) Where the Department of the Government of Southern Ireland or Northern Ireland corresponding to the Commissioners of Inland Revenue are satisfied that estate duty is payable in Great Britain by reason of a death in respect of any property situate in Great Britain and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the estate duty or duty in the nature of estate duty payable in Southern Ireland or Northern Ireland in respect of that property on the same death.

(3) The foregoing provisions shall apply as between Southern Ireland on the one hand and Northern Ireland on the other in like manner as they apply as between Great Britain on the one hand and Southern or Northern Ireland on the other.

(4) If any question arises as to whether any property is to be treated for the purposes of this section as situate in Great Britain or in Southern Ireland or in Northern Ireland, the question shall be decided by the Joint Exchequer Board.

(5) Any Irish transfer order providing for the adaptation of the enactments relating to the resealing or certification in one country of probate or letters of administration or confirmation of executors granted in another country, may provide that the court or officer before resealing or certifying the probate or letters of administration or confirmation shall be satisfied that estate duty, or duty in the nature of estate duty, has been paid in respect of so much, if any, of the estate as is liable to that duty in the country in which the resealing or certification takes place, and for requiring the resealing or certification of probate, letters of

²² This Act now applies only to Northern Ireland : Irish Free State (Consequential Provisions) Act, 1922, s. 1.

administration, or confirmation of executors, in cases where, by virtue of section forty-eight of the Finance (No. 2) Act, 1915, such resealing or certification is not required.²³

The Finance Act, 1921

(11 & 12 GEO. 5, c. 32.)

[4th August 1921.]

PART IV

DEATH DUTIES

43.—(1) The provisions of section fourteen of the Finance Act, 1900, under which, as amended by subsequent enactments, relief is given in respect of the death duties payable on property passing on the death of certain persons killed in the present war, shall, subject to the provisions of this section, have effect in the case of persons, being persons to whom this section applies, who die from causes arising directly out of the present state of disorder in Ireland as they have effect in the case of the persons killed as aforesaid.

(2) The persons to whom this section applies are the members of any of His Majesty's Forces, judges, magistrates, members of any police force in Ireland (including special constables), and members of His Majesty's Civil Service serving in Ireland.

(3) The Treasury shall, for the purposes of this section, act in the case of persons who are not members of His Majesty's Forces on the recommendation of the Lord Lieutenant of Ireland.

(4) This section shall apply in the case of any persons dying from any such causes as aforesaid arising at any time after the thirty-first day of December, nineteen hundred and eighteen, and before such date as His Majesty may by Order in Council fix.

44. . . .²⁴

PART VI

GENERAL

63.—(1) Where any document in the custody of the Commissioners relating to duty charged or chargeable in respect of any property has been lost or destroyed, or has been so defaced or damaged as to be illegible or otherwise useless, the Commissioners may require any person appearing to them to be accountable or to have accounted for that duty, to furnish to them to the best of

²³ See Government of Ireland (Resealing of Probates, etc.) Orders, 1922 and 1923.

²⁴ Repealed by F. A., 1930, s. 53 (8), and Schedule III, Part IV, as to deaths on or after August 1, 1930.

his ability such information, particulars and evidence, including evidence by affidavit, as they may require for replacing that document, and any person so appearing to be accountable shall be liable to discharge all claims in respect of that duty, unless he proves to the satisfaction of the Commissioners that those claims have already been discharged or that he is not accountable for the duty.

(2) The Commissioners shall have all such powers for the purpose of enforcing any requirement made by them under this section as they had for the purpose of enforcing the delivery of the document which is to be replaced, and all statutory provisions in that behalf, including provisions as to penalties, shall apply accordingly with the necessary modifications.

(3) The Commissioners shall pay to any person complying with any requirement under this section his reasonable cost of so doing, and, if any question arises as to the amount so to be paid as costs, the question shall be referred to and determined by a taxing master of the High Court, or in Scotland by the auditor of the Court of Session.

(4) Where the Commissioners are required by any person to issue any document certifying that any duty has been paid or is not payable, or to make any allowance in respect of any duty paid, or to do any act or thing consequent on the payment of duty, they may, where the evidence of the payment of or of non-liability to duty has been destroyed, refuse, notwithstanding any enactment to the contrary, to comply with the requirement except on proof to their satisfaction that the duty has been paid or is not payable, or that the act or thing required to be done is in the circumstances reasonably necessary, as the case may be.

(5) Where the Commissioners declare that by reason of the loss, destruction, defacement, or damage of any document they are unable to certify that there is no claim for duty in respect of any property, a court may, in any proceedings relating to that property, notwithstanding any enactment to the contrary, dispose of that property or the proceeds of sale thereof without making provision for the payment of any duty chargeable in respect thereof :

Provided that nothing in the foregoing provision shall affect any right of the Commissioners as against any person accountable for any duty so chargeable, not being a purchaser for value without notice that there is a claim for duty in respect thereof.

(6) In this section, unless the context otherwise requires—

The expression “ document ” includes affidavit, account, and record ;

The expression “ Commissioners ” means the Commissioners of Inland Revenue ;

The expression “ duty ” means any death duty.

65.—(1) * * * * *

Part IV of this Act shall be construed together with the Finance Act, 1894.

(2) This Act may be cited as the Finance Act, 1921.

* * * * *

The Finance Act, 1922

(12 & 13 GEO. 5, c. 17.)

[20th July 1922.]

PART V

MISCELLANEOUS AND GENERAL

44. . . .²⁵

45.—(1) Section twenty of the Finance Act, 1894 (which relates to payment of death duties where death duties are payable in certain British Possessions), shall have effect as if the Malay States were a British Possession within the meaning of that section.

(2) For the purposes of this section, “the Malay States” means the Federated Malay States and Johore, Kedah, Perlis, Kelantan, Trengganu, and Brunei.

49.— * * * * *

(2) This Act may be cited as the Finance Act, 1922.

(3) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * *

²⁵ This section, repealed by F. A., 1949, s. 52 (10) and Eleventh Schedule, as to deaths on or after July 30, 1949, reads as follows:—

“Where any land or chattels settled by Act of Parliament or Royal Grant pass on the death of any person, any Estate duty payable in respect thereof, or of any interest therein under sub-section (5) of section five of the Finance Act, 1894, may, at the option of the person authorised or required to pay the same, and notwithstanding anything in the said section or in the Act of Parliament or Royal Grant settling the said land or chattels, be treated as a charge on and be raised and paid out of the corpus of such land or chattels, and the provisions of section nine of the Finance Act, 1894, dealing with the charge of Estate duty and the facilities for raising that duty shall apply.

The option given by this section shall be exercisable in any case in which Estate duty in respect of land or chattels, or any interest therein, to which subsection (5) of section five of the Finance Act, 1894, applies, is unpaid at the date of the passing of this Act, irrespective of the date of the death which gave rise to the claim for that duty.”

The Irish Free State (Consequential Provisions) Act, 1922

(13 GEO. 5, SESS. 2, c. 2.)

[5th December 1922.]

5.—(1) If His Majesty in Council is pleased to declare—

(a) that under the law in force in the Irish Free State any tax is payable in respect of a subject of charge in respect of which a corresponding tax is payable also in Great Britain; and

(b) that arrangements as specified in the declaration have been made with the Government of the Irish Free State with a view to the granting of relief in cases where there is a charge both to the British tax and to the Irish tax in respect of the same subject matter;

then, unless and until the declaration is revoked by His Majesty in Council, the arrangements specified therein shall, so far as they relate to the relief to be granted from the British tax, have effect as if enacted in this Act, but only if and so long as the arrangements, so far as they relate to the relief to be granted from the Irish tax, have the effect of law in the Irish Free State.²⁶

(2) Any declaration made by His Majesty in Council under this section shall be laid before the Commons House of Parliament as soon as may be after it is made, and, if an Address is presented to His Majesty by that House within twenty-one days on which that House has sat next after the declaration is laid before it praying that the declaration may be revoked, His Majesty in Council may revoke the declaration, and the arrangements specified in the declaration shall thereupon cease to have effect, but without prejudice to the validity of anything previously done thereunder or to the making of a new declaration.

(3) The obligation as to secrecy imposed by any enactment with regard to any tax to which any declaration made by His Majesty in Council under this section relates shall not prevent the disclosure to any authorised Officer of the Government of the Irish Free State of such facts as may be necessary to enable relief to be duly given in accordance with the arrangements specified in the declaration.

* * * * *

²⁶ See the Declaration of 1923, reprinted below, p. 374.

The Finance Act, 1924

(14 & 15 GEO. 5, c. 21.)

[1st August 1924.]

PART III

MISCELLANEOUS AND GENERAL

38.²⁷—(1) All such relief as might have been given under section fourteen of the Finance Act, 1900, as amended by subsequent enactments (but not including section two of the Death Duties (Killed in War) Act, 1914), in respect of the death duties payable on property passing on the death of certain persons killed in the late war shall be given in respect of the death duties payable on the death of persons, being persons to whom this section applies, who die from wounds inflicted, accidents occurring, or disease contracted while on active service against an enemy, or on service which is of a warlike nature, or which, in the opinion of the Treasury, otherwise involves the same risks as active service.

(2) The persons to whom this section applies are the members of His Majesty's Forces who are subject either to the Naval Discipline Act or to military law, whether as officers, non-commissioned officers, or soldiers, under Part V of the Army Act, or to the Air Force Act.

(3) This section shall apply in the case of any persons dying from any such causes aforesaid arising after the thirty-first day of August, nineteen hundred and twenty-one.

41. * * * * * *

(2) This Act may be cited as the Finance Act, 1924.

(3) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * * *

The Law of Property Act, 1925

(15 & 16 GEO. 5, c. 20.)

[9th April 1925.]

PART I

GENERAL PRINCIPLES AS TO LEGAL ESTATES, EQUITABLE INTERESTS AND POWERS

Death Duties

16.—(1) A personal representative shall be accountable for all death duties which may become leviable or payable on the

²⁷ Extended by F. A., 1940, s. 64, and F. A., 1941, s. 46.

death of the deceased in respect of land (including settled land) which devolves upon him by virtue of any statute or otherwise.

(2) In every other case the estate owner (other than a purchaser who acquires a legal estate after the charge for death duties has attached and free from such charge), shall be accountable for all the duties aforesaid which become leviable or payable in respect of his estate in the land or any interest therein capable of being over-reached by his conveyance, being a conveyance to a purchaser made under the Settled Land Act, 1925, or pursuant to a trust for sale.

(3) For the purpose of raising the duty, and the costs of raising the same, the personal representative or other person accountable as aforesaid shall have all the powers which are by any statute conferred for raising the duty.

(4) Nothing in this Act shall alter any duty payable in respect of land, or impose any new duty thereon, or affect the remedies of the Commissioners of Inland Revenue against any person other than a purchaser or a person deriving title under him.

(5) Notwithstanding that any duties are by this section made payable by the personal representative or other person aforesaid, nothing in this Part of this Act shall affect the liability of the persons beneficially interested or their respective interests in respect of any duty, and they shall accordingly account for or repay the same and any interest and costs attributable thereto to the said Commissioners or to the personal representative or other person accountable as aforesaid, as the case may require.

(6) Nothing in this Part of this Act shall impose on a personal representative, tenant for life, statutory owner, trustee for sale, or other person in a fiduciary position, as such, any liability for payment of duty, in excess of the assets (including land) vested in him or in the trustees of the settlement which may for the time being be available in his hands or in the hands of such trustees for the payment of the duty or which would have been so available but for his or their own neglect or default, or impose a charge for duties on leasehold land, or render a mortgagee liable in respect of any charge for duties which is not paramount to his mortgage.

(7) The said Commissioners, on being satisfied that a personal representative or other person accountable has paid or commuted or will pay or commute all death duties for which he is accountable in respect of the land or any part thereof, shall, if required by him, give a certificate to that effect, which shall discharge from any further claim for such duty the land to which the certificate extends, and the production of such certificate to the land registrar or other proper officer shall be

a sufficient authority to enable him to cancel any land charge registered in respect of the duty so far as it affects the land to which the certificate extends.

17.—(1) Where a charge in respect of death duties is not registered as a land charge²⁸, a purchaser of a legal estate shall take free therefrom, unless the charge for duties attached before the commencement of this Act and the purchaser had notice of the facts giving rise to the charge.

(2) Where a charge in respect of death duties is not registered as a land charge, the person who conveys a legal estate to a purchaser, and the proceeds of sale, funds, and other property (if any) derived from the conveyance and the income thereof shall (subject as in this Act provided) be or remain liable in respect of and stand charged with the payment of the death duties the charge for which is over-reached by the conveyance, together with any interest payable in respect of the same.

(3) Notwithstanding that any death duties may be payable by instalments, on a conveyance of a legal estate by way of sale exchange or legal mortgage all death duties payable in respect of the land dealt with and remaining unpaid shall, if the charge for the duties is over-reached by such conveyance, immediately become payable and carry interest at the rate of four pounds²⁹ per centum per annum from the date of the conveyance :

Provided that, where by reason of this subsection an amount is paid or becomes payable for duties and interest in excess of the amount which would have been payable if the duties had continued to be paid by instalments, such excess shall be repaid or allowed as a deduction by the Commissioners of Inland Revenue.

(4) Except in the case of a conveyance to a purchaser, a conveyance shall take effect subject to any subsisting charge or liability for payment of the duties and interest, if any, notwithstanding that the charge for duties may not have been registered.

(5) This section does not apply to registered land.

18.—(1) Capital money liable to be laid out in the purchase of land to be settled in the same manner as the land in respect of which any death duties may have become payable, and personal estate held on the same trusts as the proceeds of sale of land, being land held on trust for sale in respect of which any such duties may have become payable, may, by the direction

²⁸ See Land Charges Act, 1925, s. 10.

²⁹ Reduced to three per cent. by F. A., 1933, s. 43 (2), as to interest accruing after April 25, 1933, and to two per cent. by F. A., 1943, s. 27 (2), as to that accruing after April 12, 1943.

of the tenant for life, statutory owner, or trustee for sale who is accountable, and although the duty is only payable in respect of an interest which is or is capable of being over-reached by a conveyance to a purchaser, be applied in discharging all or any of the duties aforesaid and the costs of discharging the same.

(2) Where the duties would not, except by virtue of the last subsection, be payable out of the capital money or personal estate aforesaid—

- (a) the amount so paid shall be repaid by the person liable for the duty to the trustees of the settlement or the trustees for sale by the like instalments and at the like rate of interest by and at which the unpaid duty and the interest thereon might have been paid, or, where the land has been conveyed to a purchaser, would have been paid if the land had not been so conveyed;
- (b) the interest of the person so liable, remaining subject to the settlement of the land or of the proceeds of sale, shall stand charged with the repayment of the instalments and the interest aforesaid;
- (c) the trustees of the settlement or the trustees for sale shall be entitled to recover and receive any excess of duty which may become repayable by the said Commissioners.

PART XII

CONSTRUCTION, JURISDICTION, AND GENERAL PROVISIONS

205.—(1) In this Act unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say :—

- * * * * *
- (iv) “Death duty” means Estate duty, . . .³⁰ and every other duty leviable or payable on a death;
- (v) “Estate owner” means the owner of a legal estate, but an infant is not capable of being an estate owner;
- * * * * *
- (xvii) “Notice” includes constructive notice;
- (xviii) “Personal representative” means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court;
- * * * * *

³⁰ Words omitted (*viz.*, “Succession duty, Legacy duty”) repealed by F. A., 1949, s. 52 (10) and Eleventh Schedule.

- (xxi) "Purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property except that in Part I of this Act and elsewhere where so expressly provided "purchaser" only means a person who acquires an interest in or charge on property for money or money's worth; and in reference to a legal estate includes a chargee by way of legal mortgage; and where the context so requires "purchaser" includes an intending purchaser; "purchase" has a meaning corresponding with that of "purchaser"; and "valuable consideration" includes marriage but does not include a nominal consideration in money;
- (xxii) "Registered land" has the same meaning as in the Land Registration Act, 1925, and "Land Registrar" means the Chief Land Registrar under that Act;
- * * * * *
- (xxvi) "Tenant for life," "statutory owner," "settled land," "settlement," "vesting deed," "subsidiary vesting deed," "vesting order," "vesting instrument," "trust instrument," "capital money," and "trustees of the settlement" have the same meanings as in the Settled Land Act, 1925;
- * * * * *

209.—(1) This Act may be cited as the Law of Property Act, 1925.

(2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-six.

(3) This Act extends to England and Wales only.

The Land Registration Act, 1925

(15 & 16 GEO. 5, c. 21.)

[9th April 1925.]

PART I

PRELIMINARY

3. In this Act unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

* * * * *

- (iii) "Death duty" means Estate duty, . . .³¹ and every other duty leviable or payable on any death;

³¹ Words omitted (*viz.*, "Succession duty, Legacy duty") repealed by F. A., 1949, s. 52 (10) and Eleventh Schedule.

- (iv) "Estate owner" means the owner of a legal estate, but an infant is not capable of being an estate owner;
 * * * * *
- (xv) "Minor interests" mean the interests not capable of being disposed of or created by registered dispositions and capable of being overridden (whether or not a purchaser has notice thereof) by the proprietors unless protected as provided by this Act, and all rights and interests which are not registered or protected on the register and are not overriding interests, and include—
 (a) in the case of land held on trust for sale, all interests and powers which are under the Law of Property Act, 1925, capable of being overridden by the trustees for sale, whether or not such interests and powers are so protected; and
 (b) in the case of settled land, all interests and powers which are under the Settled Land Act, 1925, and the Law of Property Act, 1925, or either of them, capable of being overridden by the tenant for life or statutory owner, whether or not such interests and powers are so protected as aforesaid;
 * * * * *
- (xvii) "Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court; and where there are special personal representatives for the purposes of any settled land, it means, in relation to that land, those representatives;
 * * * * *
- (xx) "Proprietor" means the registered proprietor for the time being of an estate in land or of a charge;
- (xxi) "Purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee, or other person who for valuable consideration acquires any interest in land or in any charge on land;
- (xxii) "Registered dispositions" mean dispositions which take effect under the powers conferred on the proprietor by way of transfer, charge, lease or otherwise and to which (when required to be registered) special effect or priority is given by this Act on registration;
- (xxiii) "Registered estate," in reference to land, means the legal estate, or other registered interest, if any, as respects which a person is for the time being registered

as proprietor, but does not include a registered charge and a "registered charge" includes a mortgage or incumbrance registered as a charge under this Act;

- (xxiv) "Registered land" means land or any estate or interest in land the title to which is registered under this Act or any enactment replaced by this Act, and includes any easement, right, privilege, or benefit which is appurtenant or appendant thereto, and any mines and minerals within or under the same and held therewith;

* * * * *

PART VI

GENERAL PROVISIONS AS TO REGISTRATION AND THE EFFECT THEREOF

73.—(1) A registered disposition in favour of a purchaser shall operate to vest in him the estate or interest transferred or created by the disposition free from all claims of His Majesty for death duties, notwithstanding that notice of a claim for duties may be noted on the register under this section.

(2) A disposition to any person, other than a purchaser, shall take effect subject to any charge for payment of death duties and the interest thereon, whether notice of a claim for the duties is entered on the register or not.

(3) A personal representative, in whom the registered estate vests on a death, shall be accountable for all death duties which may become leviable or payable on the death of the deceased in respect of the registered land or any interest therein.

(4) In every other case the proprietor of a registered estate (other than a purchaser who acquires a registered estate free from the charge for duties) shall be accountable for all the death duties which become leviable or payable in respect of that estate or of any minor interest capable of being overridden by a registered disposition made by him.

(5) A personal representative or other proprietor who disposes of any interest in registered land to a purchaser by a disposition which is registered or protected on the register, and the proceeds of sale, funds and other property, if any, derived from the disposition and the income thereof, shall (subject as hereinafter provided) be and remain liable in respect of and stand charged with the payment of the duties the charge for which is overridden by the disposition, together with any interest payable in respect of the same.

(6) Notwithstanding that any duties may be payable by instalments, on a disposition of a registered estate by way of sale, exchange, or charge, all death duties payable in respect of the estate dealt with remaining unpaid, the charge for which

is overridden by such disposition, shall immediately become payable and carry interest at the rate of four pounds³² per centum per annum from the date of the disposition :

Provided that, where by reason of this subsection an amount is paid or becomes payable for duties in excess of the amount which would have been payable if the duties had continued to be paid by instalments, such excess shall be repaid or allowed as a deduction by the Commissioners of Inland Revenue.

(7) Where on the death of a proprietor it appears to the registrar that a charge for death duties has arisen, the registrar shall enter notice of the charge on the register in the prescribed manner.

(8) When any such notice is entered, the registrar shall, before registering or entering notice of any disposition which would operate to override the charge for duties, give notice of the intended registration or entry to the said Commissioners, and cancel the notice of the claim for duties so far as it relates to the land or interest therein comprised in the disposition.

(9) When all claims for duties have been satisfied, or no such claims arise, or the said Commissioners are satisfied that the duties will be paid or commuted, they shall notify the fact to the registrar, who shall thereupon cancel the notice, if any, of the claim.

(10) For the purpose of raising the duty and the costs of raising the same, the personal representative or other proprietor accountable as aforesaid shall have all the powers which are by any statute conferred on any person for raising the duty.

(11) Notwithstanding that any duties are by this section made payable by the personal representative or proprietor of the land, nothing herein contained shall affect the liability of the persons beneficially interested or of their minor interests in respect of any duty, and such persons shall accordingly account for or repay the same, and any interest and costs attributable thereto, to the said Commissioners or to the personal representative or other proprietor made accountable, and nothing in this section shall affect the remedies of the said Commissioners against any person other than a purchaser.

(12) Capital money liable to be laid out in the purchase of land to be settled in the same manner as the land in respect of which the duty became payable, and personal estate held on the same trusts as the proceeds of sale of land (in respect of which the duty became payable) held on trust for sale, may, by

³² "Three pounds" substituted for "four pounds", as respects interest accruing due on or after April 26, 1933, by F. A., 1933, s. 43 (2), and "two per cent." on or after April 13, 1943, by F. A., 1943, S. 27 (2).

the direction of the person accountable, and although the duty is only payable in respect of a minor interest which is or is capable of being overridden by a disposition to a purchaser, be applied in discharging all or any of the duties and costs aforesaid.

(13) Where the duties would not, except by virtue of the last subsection, be payable out of capital money, the amount so paid shall be repaid by the person liable for the duty to the trustees of the settlement or trustees for sale, by the like instalments and at the like rate of interest by and at which the unpaid duty and the interest thereon might have been paid if the land had not been disposed of, and the minor or other interests of the persons liable and remaining subject to the settlement of the land or of the proceeds of the sale, shall stand charged with the repayment of the instalments and interest aforesaid; and the trustees of the settlement or the trustees for sale shall be entitled to recover and receive any excess of duty which may become repayable by the said Commissioners.

(14) Nothing in this section shall impose on a personal representative, trustee, or other person in a fiduciary position, as such, any liability for payment of duty in excess of the assets (including real estate) vested in him or in the trustees of the settlement which may for the time being be available in his or their hands for the payment of the duty, or which would have been so available but for his or their own neglect or default, or impose on the proprietor of a registered charge any liability to discharge death duties unless the claim was paramount to his charge.

(15) In this section "purchaser" includes only a purchaser for money or money's worth.

(16) This section only applies to death duties which become payable or leviable after the commencement of this Act.

With respect to death duties which become payable or leviable before that date section thirteen of the Land Transfer Act, 1897, and all the other provisions of the Land Transfer Acts, 1875 and 1897, relating to death duties shall, notwithstanding any repeal, continue to apply.

PART VIII

APPLICATION TO PARTICULAR CLASSES OF LAND

87.—(1) On the death of a proprietor, or of the survivor of two or more joint proprietors of settled land (whether the land is settled by his will or by an instrument taking effect on or previously to his death), his personal representative shall hold the settled land subject to payment or to making provision for payment of all death duties and other liabilities affecting the land, and having priority to the settlement, upon trust to transfer

the same by an assent in the prescribed manner to the tenant for life or statutory owner, and in the meantime upon trust to give effect to the minor interests under the settlement; but a transfer shall not be made to an infant.

* * * * *

148.—(1) This Act may be cited as the Land Registration Act, 1925.

(2) This Act shall come into operation on the first day of January nineteen hundred and twenty-six, but shall be deemed to come into operation immediately after the Law of Property Act, 1925, the Settled Land Act, 1925, the Land Charges Act, 1925, the Trustee Act, 1925, and the Administration of Estates Act, 1925, come into operation.

(3) This Act extends to England and Wales only.

The Land Charges Act, 1925

(15 & 16 GEO. 5, c. 22.)

[9th April 1925.]

PART V

LAND CHARGES

10.—(1) The following classes of charges on, or obligations affecting, land may be registered as land charges in the register of land charges, namely :—

* * * * *

Class C :—A mortgage charge or obligation affecting land of any of the following kinds, created either before or after the commencement of this Act, but if created before such commencement only if acquired under a conveyance made after such commencement, namely :—

* * * * *

(ii) Any equitable charge acquired by a tenant for life or statutory owner under the Finance Act, 1894, or any other statute, by reason of the discharge by him of any death duties or other liabilities, and to which special priority is given by the statute (in this Act called “ a limited owner’s charge ”);

* * * * *

Class D :—A charge or obligation affecting land of any of the following kinds, namely :—

(i) Any charge acquired by the Commissioners of Inland Revenue under any statute passed or hereafter to be passed for death duties leviable or payable on any death which occurs after the commencement of this Act; and

* * * * *

(2) A land charge shall be registered in the name of the estate owner whose estate is intended to be affected except that, in the case of a land charge registered before the commencement of this Act, under any enactment replaced by this Act, in the name of a person not being the estate owner, it may remain so registered until it is registered in the name of the estate owner in the prescribed manner.

(3) Where a land charge is not created by an instrument, short particulars of the effect of the charge shall be furnished with the application to register the charge.

(4) Nothing in this section shall be deemed to authorise the Commissioners of Inland Revenue to register a land charge in respect of any claim for death duties unless the duty has become a charge on the land, and the application to register any such charge shall state the duties in respect of which the charge is claimed, and, so far as possible, shall define the land affected, and such particulars shall be entered or referred to in the register.

* * * * *

(8) The registration of a land charge may be vacated pursuant to an order of the court or a judge thereof.

13. * * * * *

(2) A land charge of Class B, Class C or Class D, created or arising after the commencement of this Act, shall (except as hereinafter provided) be void as against a purchaser of the land charged therewith, or of any interest in such land, unless the land charge is registered in the appropriate register before the completion of the purchase :

Provided that, as respects a land charge of Class D and an estate contract created or entered into after the commencement of this Act, this subsection only applies in favour of a purchaser of a legal estate for money or money's worth.

PART VIII

GENERAL

20. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

* * * * *

(4) "Estate owner," "legal estate," "equitable interest," "trust for sale," "charge by way of legal mortgage," "will," and "death duty" have the same meanings as in the Law of Property Act, 1925 ;

* * * * *

(7) "Land charge" means a land charge of every class and includes a local land charge ;

- (8) "Purchaser" means any person (including a mortgagee or lessee) who, for valuable consideration, takes any interest in land or in a charge on land; and "purchase" has a corresponding meaning;

* * * * *

- (13) "Tenant for life," "statutory owner," "vesting instrument" and "settlement" have the same meanings as in the Settled Land Act, 1925.

23.—(1) As respects pending actions, writs, orders, deeds of arrangement and land charges (not including local land charges) required to be registered or re-registered after the commencement of this Act, this Act shall not apply thereto, if and so far as they affect registered land, and can be protected under the Land Registration Act, 1925, by lodging or registering a creditor's notice, restriction, caution, inhibition or other notice.

(2) Nothing in this Act imposes on the registrar any obligation to ascertain whether or not a pending action, writ, order, deed of arrangement or land charge affects registered land.

26.—(1) This Act may be cited as the Land Charges Act, 1925.

(2) This Act shall come into operation on the first day of January nineteen hundred and twenty-six.

(3) This Act extends to England and Wales only.

The Administration of Estates Act, 1925

(15 & 16 GEO. 5, c. 23.)

[9th April 1925.]

36.

* * * * *

(8) A conveyance of a legal estate by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral, and testamentary or administration expenses, duties, and legacies of the deceased have been discharged or provided for.

(9) An assent or conveyance given or made by a personal representative shall not, except in favour of a purchaser of a legal estate, prejudice the right of the personal representative or any other person to recover the estate or interest to which the assent or conveyance relates, or to be indemnified out of such estate or interest against any duties, debt, or liability to which such estate or interest would have been subject if there had not been any assent or conveyance.

(10) A personal representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of any such duties, debt, or liability, but shall not be entitled to postpone the giving of an assent merely by reason of the subsistence of any such duties, debt or liability if reasonable arrangements have been made for discharging the same; and an assent may be given subject to any legal estate or charge by way of legal mortgage.

* * * * *

PART V

SUPPLEMENTAL

53. * * * * *

(8) Nothing in this Act shall—

- (a) alter any death duty payable in respect of real estate or impose any new duty thereon:
- (b) render any real estate liable to Legacy duty or exempt it from Succession duty:
- (c) alter the incidence of any death duties.

The Finance Act, 1925

(15 & 16 GEO. 5, C. 36.)

[30th June 1925.]

PART III

DEATH DUTIES

22. The scale set out in the Fourth Schedule to this Act shall in the case of persons dying after the commencement of this Act be substituted for the scale set out in the Third Schedule to the Finance Act, 1919, as the scale of rates of Estate duty³³:

* * * * *

23.—(1) Where an estate in respect of which Estate duty is payable on the death of a person dying after the commencement of this Act comprises or consists of agricultural property, the Estate duty payable in respect of the agricultural property shall, instead of being charged on the principal value thereof at the

³³ Replaced as to deaths on or after August 1, 1930, by F. A., 1930, s. 33, and Sched. II.

³⁴ Proviso repealed by F. (No. 2) A., 1940, s. 42 (8), and replaced by s. 17 thereof.

appropriate rate payable under this Act, be charged as follows, that is to say, the duty shall be charged on the agricultural value of the property at the appropriate rate payable under the scale of rates set out in the Third Schedule to the Finance Act, 1919,³⁵ and shall be charged on the amount by which the principal value of the agricultural property exceeds the agricultural value thereof (in this Act referred to as "the excess principal value") at the appropriate rate payable under the scale set out in the Fourth Schedule to this Act.

(2) For the purposes of this section the agricultural value of agricultural property shall be taken to be the value which the property would bear if it were subject to a perpetual covenant prohibiting its use otherwise than as agricultural property, decreased by the value of any timber, trees, wood or underwood growing thereon.

(3) Where any agricultural property is subject to a mortgage, debt or incumbrance in respect of which an allowance is by law to be made for the purposes of Estate duty, the mortgage, debt or incumbrance shall, for the purposes of this section, be apportioned between the agricultural value of the property and the excess principal value of the property in proportion to the amounts of those two values respectively.

(4) In this section the expression "agricultural property" means agricultural property within the meaning of paragraph (g) of subsection (1) of section twenty-two of the Finance Act, 1894, and the expression "appropriate rate" means the rate of Estate duty appropriate to the principal value of the estate passing on the death of the deceased.

PART IV

GENERAL

28. * * * * * *

(3) Part III of this Act shall be construed together with the Finance Act, 1894.

(4) This Act may be cited as the Finance Act, 1925.

(5) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * * *

³⁵ Amended by F. A., 1949, s. 28 (1), as to deaths on or after July 30, 1949.

SCHEDULES

Sect. 22

FOURTH SCHEDULE

SCALE OF RATES OF ESTATE DUTY ³⁶

Principal Value of the Estate		Rate per cent. of duty	<i>Values below which the duty is reduced under s. 13 (1) of the Finance Act, 1914 ³⁷</i>	
£	£		£	s. d.
Exceeding 100 and not exceeding 500	500	1	101	0 3
" 500 " " 1,000	1,000	2	505	2 1
" 1,000 " " 5,000	5,000	3	1,010	6 3
" 5,000 " " 10,000	10,000	4	5,052	1 8
" 10,000 " " 12,500	12,500	5	10,105	5 4
" 12,500 " " 15,000	15,000	6	12,632	19 7
" 15,000 " " 18,000	18,000	7	15,161	5 10
" 18,000 " " 21,000	21,000	8	18,195	13 1
" 21,000 " " 25,000	25,000	9	21,230	15 5
" 25,000 " " 30,000	30,000	10	25,277	15 7
" 30,000 " " 35,000	35,000	11	30,337	1 7
" 35,000 " " 40,000	40,000	12	35,397	14 7
" 40,000 " " 45,000	45,000	13	40,459	15 5
" 45,000 " " 50,000	50,000	14	45,523	5 2
" 50,000 " " 55,000	55,000	15	50,588	4 9
" 55,000 " " 65,000	65,000	16	55,654	15 3
" 65,000 " " 75,000	75,000	17	65,733	2 8
" 75,000 " " 85,000	85,000	18	75,914	12 9
" 85,000 " " 100,000	100,000	19	86,049	7 8
" 100,000 " " 120,000	120,000	20	101,250	0 0
" 120,000 " " 140,000	140,000	21	121,518	19 9
" 140,000 " " 170,000	170,000	22	141,794	17 6
" 170,000 " " 200,000	200,000	23	172,207	15 11
" 200,000 " " 250,000	250,000	24	202,631	11 7
" 250,000 " " 325,000	325,000	25	253,333	6 8
" 325,000 " " 400,000	400,000	26	329,391	17 11
" 400,000 " " 500,000	500,000	27	405,479	9 1
" 500,000 " " 750,000	750,000	28	506,944	8 11
" 750,000 " " 1,000,000	1,000,000	29	760,563	7 8
" 1,000,000 " " 1,250,000	1,250,000	30	1,014,285	14 4
" 1,250,000 " " 1,500,000	1,500,000	32	1,286,764	14 2
" 1,500,000 " " 2,000,000	2,000,000	35	1,569,230	15 5
" 2,000,000 .. .. .	.. .. .	40	2,166,666	13 4

³⁶ Replaced as to deaths on or after August 1, 1930, by F. A., 1930, Sched. II.

³⁷ This column does not form part of the statute.

The Finance Act, 1927

(17 & 18 GEO. 5, c. 10)

[29th July 1927.]

PART IV**MISCELLANEOUS AND GENERAL**

51. Section sixteen of the Finance Act, 1907 (which provides that settled property to which subsection (2) of section twelve of the Finance Act, 1900, applies, instead of being aggregated with other property to a limited extent only under the said section twelve, shall, in the case of persons dying on or after the nineteenth day of April, nineteen hundred and seven, be treated as an estate by itself), shall be repealed so far as relates to persons dying after the commencement of this Act :

Provided that, where an interest in expectancy within the meaning of Part I of the Finance Act, 1894, in any property has before the eleventh day of April, nineteen hundred and twenty-seven, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

57. * * * * * *

(8) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(4) This Act may be cited as the Finance Act, 1927.

(5) Such of the provisions as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

(6) The enactments set out in Part II of the Sixth Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

Section 57

SIXTH SCHEDULE

ENACTMENTS REPEALED

PART II

Session and Chapter	Short Title	Extent of Repeal
63 & 64 Vict. c. 7	The Finance Act, 1900.	Subsection (2) of section twelve, except so far as relates to persons dying before the nineteenth day of April, nineteen hundred and seven.
* *	* *	* * *

The Finance Act, 1928

(18 & 19 GEO. 5, c. 17)

[3rd August 1928.]

30.—(1) Where any property is held upon trust in accordance with directions which are valid and effective under section nine of the Superannuation and other Trust Funds (Validation) Act, 1927 (which provides for the validation of trust funds for the reduction of the National Debt), any income arising from that property or from any accumulations of any such income and any profits of any description otherwise accruing to the property and liable to be accumulated under the trust shall be exempt from Income tax.

(2) Where any person gives such directions as are mentioned in the said section nine by any instrument, and the directions take effect during his life and immediately after the making of the instrument, the property directed to be held in accordance with those directions shall be exempt from Estate duty, unless the Treasury, within three months after they receive notice of the taking effect of the instrument, disclaim the interest of the National Debt Commissioners under the said directions.

(3) Where an absolute gift of any property is made during the lifetime of the donor to the National Debt Commissioners to be applied by them in reduction of the National Debt, the property shall be exempt from Estate duty as from the date when it is transferred to the Commissioners.

* * * * *

35. * * * * *

(4) This Act may be cited as the Finance Act, 1928.

(5) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * *

The Finance Act, 1930

(20 & 21 GEO. 5, c. 28)

[1st August 1930.]

PART III

ESTATE DUTY

Rates of Estate Duty

33. The scale set out in the Second Schedule to this Act shall in the case of persons dying after the commencement of this Act be substituted for the scale set out in the Fourth Schedule to the Finance Act, 1925, as the scale of rates of Estate duty³⁸:

* * * * *

Companies

34.—. . . .⁴⁰

* * * * *

40.⁴¹—(1) Where there pass on the death of a person dying after the commencement of this Act any objects to which this section applies, the value of those objects shall not be taken into account for the purpose of estimating the principal value of the Estate passing on the death or the rate at which Estate duty is chargeable thereon, and those objects shall, while enjoyed in kind, be exempt from death duties.

(2) In the event of the sale of any objects to which this section applies, death duties shall, subject as hereinafter provided, become chargeable on the proceeds of sale in respect of the last death on which the objects passed and, as respects Estate duty, at the rate appropriate to the principal value of the estate passing on that death upon which Estate duty is leviable, and with

³⁸ Repealed as to deaths after April 25, 1939, by F. A., 1939, s. 29.

³⁹ Proviso repealed by F. (No. 2) A., 1940, s. 42 (5) and replaced by s. 17 thereof.

⁴⁰ Sections 34, 35, 36, 37, 38 and 39 repealed by F. A., 1940, s. 65 (8), as to deaths on or after June 27, 1940. (S. 39 imposed E.D. on property subject to an annuity which had been surrendered before the annuitant's death, subject to certain conditions: sections 34–38 imposed E.D. in certain circumstances arising out of transfers of property to companies.)

⁴¹ Amended, as to deaths on or after July 28, 1950, by F. A., 1950, s. 48.

which the objects would have been aggregated if they had not been objects to which this section applies, and the person by whom or for whose benefit the objects were sold shall be accountable for the duties and shall deliver an account for the purposes thereof within one month after the sale :

Provided that death duties shall not become chargeable as aforesaid if the sale is to the National Gallery, British Museum, or any other similar national institution, any university, county council or municipal corporation in Great Britain, or the National Art Collections Fund.⁴²

(3) The objects to which this section applies are such pictures, prints, books, manuscripts, works of art, scientific collections or other things not yielding income as on a claim being made to the Treasury under this section appear to them to be of national, scientific, historic or artistic interest.

(4) Nothing in this section shall affect the power of the Treasury under subsection (2) of section fifteen of the principal Act to remit death duties chargeable in respect of any objects to which that section applies.

PART VI

MISCELLANEOUS AND GENERAL

53. * * * * * *

(3) Part III of this Act shall be construed as one with the Finance Act, 1894.

* * * * * *

(5) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(6) This Act may be cited as the Finance Act, 1930.

(7) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

(8) The enactments set out in the Third Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule, as from the dates specified therein.

⁴² Extended by F. A., 1936, s. 26: repealed, except as respects E.D., by F. A., 1949, s. 52 (10) and Eleventh Schedule.

SECOND SCHEDULE

Section 33

SCALE OF RATES OF ESTATE DUTY ⁴³

Principal Value of Estate		Rate per cent. of Duty	<i>Values below which the duty is reduced under s. 13 (1) of the Finance Act, 1914</i> ⁴⁴	
£	£		£	s. d.
Exceeding 100 and not exceeding 500	500	1	101	0 3
500	1,000	2	505	2 1
1,000	5,000	3	1,010	6 3
5,000	10,000	4	5,052	1 8
10,000	12,500	5	10,105	5 4
12,500	15,000	6	12,632	19 7
15,000	18,000	7	15,161	5 10
18,000	21,000	8	18,195	13 1
21,000	25,000	9	21,230	15 5
25,000	30,000	10	25,277	15 7
30,000	35,000	11	30,337	1 7
35,000	40,000	12	35,397	14 7
40,000	45,000	13	40,459	15 5
45,000	50,000	14	45,523	5 2
50,000	55,000	15	50,588	4 9
55,000	65,000	16	55,654	15 3
65,000	75,000	17	65,783	2 8
75,000	85,000	18	75,914	12 9
85,000	100,000	19	86,049	7 8
100,000	120,000	20	101,250	0 0
120,000	150,000	22	123,076	18 6
150,000	200,000	24	153,947	7 5
200,000	250,000	26	205,405	8 2
250,000	300,000	28	256,944	8 11
300,000	400,000	30	308,571	8 7
400,000	500,000	32	411,764	14 2
500,000	600,000	34	515,151	10 4
600,000	800,000	36	618,750	0 0
800,000	1,000,000	38	825,806	9 1
1,000,000	1,250,000	40	1,033,333	6 8
1,250,000	1,500,000	42	1,293,103	9 0
1,500,000	2,000,000	45	1,581,818	3 8
2,000,000 .. .. .	.. .. .	50	2,200,000	0 0

⁴³ Replaced by F. A., 1939, s. 29, as to deaths after April 25, 1939.⁴⁴ This column does not form part of the statute.

Section 53

THIRD SCHEDULE

PART IV

ENACTMENTS REPEALED AS FROM THE COMMENCEMENT OF THIS ACT

Session and Chapter	Short Title	Extent of Repeal
59 & 60 Vict. c. 28	The Finance Act, 1896.	Section 20 (except as regards persons dying before the commencement of this Act).
10 Edw. 7 & 1 Geo. 5, c. 8.	The Finance (1909–10) Act, 1910.	Section 63 (except as regards persons dying before the commencement of this Act).
11 & 12 Geo. 5, c. 32.	The Finance Act, 1921.	Section 44 (except as regards persons dying before the commencement of this Act).
* *	* *	* *

The Finance Act, 1931

(21 & 22 GEO. 5, c. 28)

[31st July 1931.]

PART IV

MISCELLANEOUS AND GENERAL

40.—(1) Where any estate or interest in land—

- (a) is given, devised, or bequeathed by any person to, and so as to become indefeasibly vested in, the National Trust and is held by that Trust inalienably for the public benefit; or
- (b) is given, devised, or bequeathed by any person to, and so as to become indefeasibly vested in, the Commissioners of Works, or a local authority, and accepted by the Commissioners or authority under section two of the Ancient Monuments Consolidation and Amendment Act, 1913;

the Treasury may, if that person dies after the commencement of this Act, and the estate or interest was the whole estate or interest of that person in the land, remit any duties leviable on or with reference to the death of that person, and no property the duties in respect of which are remitted under this section shall be aggregated with any other property for the purpose of fixing the rate of any Estate duty.⁴⁵

⁴⁵ Amended by F. A., 1937, s. 31 (6).

(2) In this section the expression "National Trust" means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act, 1907.⁴⁶

41. Where the holder of a war savings certificate or a national savings certificate is at the time of his death domiciled in the Channel Islands or the Isle of Man, his rights under the certificate shall, for the purposes of the enactments relating to Estate duty payable in Great Britain, be deemed to be property situate out of Great Britain.

44. * * * * *

(4) This Act may be cited as the Finance Act, 1931.

(5) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * *

The Finance (No. 2) Act, 1931

(21 & 22 GEO. 5, c. 49)

[5th October 1931.]

PART IV

MISCELLANEOUS AND GENERAL

22.—(1) Any securities issued by the Treasury under any Act may be issued with the condition that—

(a) so long as the securities are in the beneficial ownership of persons who are not ordinarily resident in the United Kingdom, the interest thereon shall be exempt from income tax; and

(b) so long as the securities are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom, neither the capital thereof nor the interest thereon shall be liable to any taxation present or future.^{46a}

* * * * *

25. * * * * *

(4) This Act may be cited as the Finance (No. 2) Act, 1931.

* * * * *

⁴⁶ Definition extended by F. A., 1936, s. 27.

^{46a} Extended by F. A., 1940, s. 60 (1).

The Finance Act, 1933

(23 & 24 GEO. 5, c. 19)

[28th June 1933.]

PART V

MISCELLANEOUS AND GENERAL

43.—(1) Section thirty of the Finance Act, 1919 (which amended section eighteen of the Finance Act, 1896, by increasing the rate of interest on death duties from three to four per cent. per annum), shall cease to have effect except as respects interest accruing due before the twenty-sixth day of April, nineteen hundred and thirty-three, and the said section eighteen shall have effect as originally enacted as respects interest accruing due on or after that date.⁴⁷

(2) Subsection (8) of section seventeen of the Law of Property Act, 1925, and subsection (6) of section seventy-three of the Land Registration Act, 1925, shall have effect, as respects interest accruing due on or after the said date, as if for the words “four pounds” there were substituted the words “three pounds”.

47.—(1) This Act may be cited as the Finance Act, 1933.

* * * * *

(6) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * *

The Administration of Justice (Miscellaneous Provisions) Act, 1933

(23 & 24 GEO. 5, c. 36)

[28th July 1933.]

3. Any person against whom a claim has been made by the Crown for the payment of any death duties which have, or are alleged to have, become chargeable by reason of the death of any person, or who has reasonable grounds for apprehending that a claim may be made against him in respect of any duties which have, or are alleged to have, become so chargeable, may, subject to and in accordance with rules of court, apply in a summary manner to the High Court to have it determined whether he is accountable for or chargeable with, or is or may thereafter

⁴⁷ Rate reduced to two per cent. by F. A., 1943, s. 27, as to interest accruing on or after April 13, 1943.

become liable to pay, those duties, and, if so, to have the extent of his liability determined, and the Court shall have power to hear any application made under this section and to make such order thereon as seems proper.

7.—(1) In any civil proceedings to which the Crown is a party in any court having power to award costs in cases between subjects, and in any arbitration to which the Crown is a party, the costs of and incidental to the proceedings shall be in the discretion of the court or arbitrator to be exercised in the same manner and on the same principles as in cases between subjects, and the court or arbitrator shall have power to make an order for the payment of costs by or to the Crown accordingly:

Provided that—

* * * * *

(b) nothing in this section shall affect the power of the court or arbitrator to order, or any enactment providing for, the payment of costs out of any particular fund or property, or any enactment expressly relieving any department or officer of the Crown of the liability to pay costs.

(2) In this section the expression “civil proceedings” includes proceedings by petition of right and proceedings by the Crown in the High Court or a county court for the recovery of fines or penalties, and references to proceedings to which the Crown is a party include references to proceedings to which the Attorney-General or any Government department or any officer of the Crown as such is a party, so, however, that the Crown shall not be deemed to be a party to any proceedings by reason only that the proceedings are proceedings by the Attorney-General on the relation of some other person.

(3) This section shall apply to proceedings pending at the commencement of this Act.

10.—(1) This Act may be cited as the Administration of Justice (Miscellaneous Provisions) Act, 1933.

(2) This Act shall not extend to Scotland or to Northern Ireland.

(3) The enactments set out in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(4) This Act shall come into operation on the first day of September nineteen hundred and thirty-three.

Section 10

THIRD SCHEDULE

ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
* * 16 & 17 Vict. c. 51	* * The Succession Duty Act, 1853.	* * * In section fifty, the words "and the costs thereof".
* * 28 & 29 Vict. c. 104	* * The Crown Suits Act, 1865.	* * * In section fifty-eight, the words "and for costs"; and in section fifty-nine, the words "and may award costs".
* * 57 & 58 Vict. c. 30	* * The Finance Act, 1894.	* * * In subsection (3) of section ten, the words "the costs of the appeal shall be in the discretion of the court and".

The Finance Act, 1934

(24 & 25 GEO. 5, c. 32)

[12th July 1934.]

PART IV

MISCELLANEOUS AND GENERAL

28. For the purposes of paragraph (d) of subsection (1) of section two of the Finance Act, 1894, where an annuity or other interest has been purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, the extent of any beneficial interest therein accruing or arising by survivorship or otherwise on the death of the deceased shall be ascertained, and shall be deemed always to have been ascertainable, without regard to any interest in expectancy the beneficiary may have had therein before the death:

Provided that, in a case where the deceased died before the passing of this Act, this section shall not apply to a beneficial interest accruing or arising under a disposition of property which produced income falling to be dealt with under the disposition during the lifetime of the deceased if no Estate duty was paid in respect of the beneficial interest before the eighth day of December, nineteen hundred and thirty-two.

30.—(1) This Act may be cited as the Finance Act, 1934.

* * * * *

(4) Any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended or applied by any subsequent enactment including this Act.

(6) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * *

The Finance Act, 1935

(25 & 26 GEO. 5, c. 24)

[10th July 1935.]

PART IV

MISCELLANEOUS AND GENERAL

33.—(1) Subsection (1) of section fifteen of the Finance Act, 1894 (which exempts from Estate duty certain annuities not exceeding twenty-five pounds) shall have effect, in the case of an annuity purchased or provided by a person dying after the passing of this Act, as if the words “fifty-two pounds” were substituted for the words “twenty-five pounds”.

(2) As annuity of less than one hundred and four pounds which would, but for the fact that it exceeds fifty-two pounds, be exempted from Estate duty under the provisions of the said subsection as amended by this section, shall be chargeable with Estate duty as if it were an annuity of twice the amount by which it exceeds fifty-two pounds and as if the said provisions were not in force.

35.—(1) This Act may be cited as the Finance Act, 1935.

* * * * *

(6) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * *

The Finance Act, 1936

(26 GEO. 5 & 1 EDW. 8, c. 34.)

[16th July 1936.]

PART III

DEATH DUTIES

24. * * * * *

25. The payment (whether before or after the passing of this Act) of estate duty chargeable under the law in force in Northern

⁴⁸ Section repealed as to deaths on or after July 30, 1949, by F. A., 1949, s. 52 (10) and Eleventh Schedule, and replaced by s. 28 (2) thereof. It read as follows :—

“ The exemption from estate duty which exists by virtue of sub-section (2) of section two of the Finance Act, 1894, in the case of certain property

Ireland on the death of a party to a marriage shall, for the purpose of any relief given by subsection (2) of section five of the Finance Act, 1894, as respects the payment of any duty on the death after the passing of this Act of the other party to the marriage, have the like effect in all respects as if the duty paid had been chargeable under the law in force in Great Britain.

26. Section forty-four of the Finance Act, 1921, and the proviso to subsection (2) of section forty of the Finance Act, 1930 (which provide that death duties shall not become chargeable in respect of certain property on the sale thereof to the National Gallery, British Museum, or certain other institutions and persons therein mentioned), shall have effect as if the references to such a sale included a reference to a sale after the passing of this Act to the society known as "the Friends of the National Libraries".

27.⁴⁹ In section forty of the Finance Act, 1931 (which provides for exemption from death duties in the case of land given to the National Trust), the expression "National Trust" shall include the body incorporated under the National Trust for Scotland Order Confirmation Act, 1935, by the name of "The National Trust for Scotland for Places of Historic Interest or Natural Beauty":

Provided that, in relation to the said body, the reference in the said section forty to the commencement of the Finance Act, 1931, shall be construed as a reference to the passing of this Act.

PART IV

MISCELLANEOUS AND GENERAL

35.—(1) This Act may be cited as the Finance Act, 1936.

* * * * *

(4) Any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including (unless the context otherwise requires) this Act.

* * * * *

situate out of Great Britain shall, subject as hereinafter provided, cease so far as relates to any such property passing on the death of a person dying after the passing of this Act domiciled in some part of Great Britain:

Provided that nothing in this section shall operate so as to charge with duty any such property—

- (a) which passes under or by reason of a disposition made by a person who, at the date on which the disposition took effect, was domiciled elsewhere than in some part of Great Britain, unless the disposition was made, directly or indirectly, on behalf of or at the expense of, or out of funds provided by, a person who at that date was domiciled in some part of Great Britain; or
- (b) which by the law of the country in which it is situate is immovable property."

⁴⁹ See also F. A., 1937, s. 31.

(6) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * *

The Finance Act, 1937

(1 EDW. 8 & 1 GEO. 6, c. 54)

[30th July, 1937.]

PART V

MISCELLANEOUS AND GENERAL

* * * * *

31.—(1) Where any estate or interest in land (in this section referred to as “the settled property”) is given, devised or bequeathed by any person (in this section referred to as “the disponent”) in such manner as to render the National Trust entitled indefeasibly to the settled property subject to one or more life interests created by the gift, devise or bequest, being life interests to which this section applies, but to no other interest so created, exemption from death duties shall be granted subject to and in accordance with the provisions of this section.⁵⁰

(2) The life interests to which this section applies are—

- (a) a life interest (whether extending to the whole or to a part only of the rents and profits arising from the settled property, and whether or not determinable upon an event other than death) given to the disponent;
- (b) a like interest given to the spouse or a child of the disponent and commencing, so as to entitle the beneficiary as from its commencement to receipt for his own use of all the rents and profits to which it extends, on the date of the cesser of an interest given to the disponent as aforesaid;
- (c) a like interest given to the spouse or a child of the disponent and commencing as aforesaid on the date on which the gift is made;
- (d) a like interest devised or bequeathed to the spouse or a child of the disponent and commencing as aforesaid on the date of the disponent's death.

(3) In the case of any estate duty that would, but for this provision, have been leviable in respect of the settled property or any part thereof on or with reference to the death after the passing of this Act of the disponent, or of a person, whether being

⁵⁰ Extended by F. A., 1949, s. 31.

the disposer or a spouse or child of his, to whom such an interest as aforesaid is given, devised or bequeathed, exemption shall be granted, if on the death the settled property passes, or a benefit accrues therefrom, to the National Trust, as follows, that is to say—

- (a) exemption shall be granted as to an amount of that duty (whether being the whole or a part thereof) corresponding to the extent to which the settled property passes, or a benefit accrues therefrom, to the National Trust as compared with the extent to which the settled property passes, or a benefit accrues therefrom, to any person or persons entitled to such an interest or interests as aforesaid;
- (b) for the purposes of this subsection, the extent to which on a death the settled property passes, or a benefit accrues therefrom, to any person shall be computed by reference to the extent to which that person becomes on the death entitled to receive for his own use the rents and profits arising from the settled property computed as at the death:

Provided that, where the death is that of the disposer under a gift and the National Trust is immediately before the death entitled to any extent to receipt of the rents and profits of the settled property for its own use, the settled property shall be deemed to that extent to pass to the National Trust on the death;

- (c) where exemption is granted as to a part of the estate duty leviable on or with reference to any death, the residue thereof shall be charged and borne in like manner as if the passing on the death, or the benefit accruing on the death, as the case may be, had been a passing or a benefit accruing, wholly to the person or persons other than the National Trust mentioned in paragraph (a) of this subsection.

(4) . . . ⁵¹

(5) The exemptions from duty conferred by the foregoing provisions of this section shall not have effect unless within six months from the date on which the gift is made, or the date of the death of the testator, as the case may be, or, in the case of a gift made before the date of the passing of this Act, that date, or within such extended period as the Commissioners of Inland Revenue may allow, the interest of the National Trust has been so dealt with as to be held by the Trust inalienably.

(6) Where the requirements of subsection (1) of section forty of the Finance Act, 1981, are fulfilled in relation to any estate

⁵¹ Subsection repealed by F. A., 1949, s. 52 (10) and Eleventh Schedule as to deaths on or after July 30, 1949 (it dealt with Succession duty).

or interest in land given, devised or bequeathed by any person to the National Trust, then, if that person dies after the passing of this Act, the estate or interest shall be exempt from any duties which might under that subsection have been remitted by the Treasury.

(7) In this section the expression "the National Trust" has the same meaning as in section forty of the Finance Act, 1931.

* * * * *

34.—(1) This Act may be cited as the Finance Act, 1937.

* * * * *

(4) Any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including (unless the context otherwise requires) this Act.

(5) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * *

The Finance Act, 1938

(1 & 2 Geo. 6, c. 46)

[29th July 1938.]

PART VI

ESTATE DUTY

47.—(1) The following provisions of this section shall have effect for the purpose of the operation of Part I of the Finance Act, 1894 (in this Part of this Act referred to as "the principal Act") in relation to the death of a person on whose death an interest in the residue of the estate of a testator or intestate, or in a part thereof, is limited to cease, and who dies before the completion of the administration of the estate.

(2) Such an interest shall, until the completion of the administration, be deemed to be an interest in the unadministered estate of the testator or intestate, as for the time being held by his personal representatives subject to outstanding charges on residue and to any adjustments between capital and income remaining to be made in a due course of administration, and in the property (if any) representing ascertained residue.

(3) Such an interest shall be deemed to have become an interest in possession on the date as from which the income of the residue would have been attributable to that interest if the residue had been ascertained immediately after the death of the testator or intestate.

(4) Where such an interest is an interest in a part only of the residue of an estate, the references in the foregoing provisions

of this section to the unadministered estate, to residue and to charges on residue, shall be construed as references to a corresponding part thereof.

(5) In this section—

- (a) the expression “unadministered estate” means all the property for the time being held by the personal representatives of a testator or intestate as such, excluding property devolving on the personal representatives otherwise than as assets for payment of his debts and property that is the subject of a specific disposition;
 - (b) the expression “ascertained residue” means property which, having ceased to be held by the personal representatives as such, is held as part of the residue;
 - (c) the expressions “personal representatives”, “charges on residue” and “specific disposition” have the meanings assigned to them respectively by Part III of this Act;⁵²
 - (d) references to personal representatives as such shall be construed as provided in the said Part III.⁵²
- (6) In the application of this section to Scotland—
- (a) references to the completion of the administration of an estate shall be construed as provided in the said Part III;⁵²

⁵² Part III of this Act included the following for this purpose:—

“35.—(4) The expression ‘personal representatives’ means, in relation to the estate of a deceased person, his personal representatives as defined in relation to England by section fifty-five of the Administration of Estates Act, 1925, and persons having in relation to the deceased under the law of another country any functions corresponding to the functions for administration purposes under the law of England of personal representatives as so defined, and references to personal representatives as such shall be construed as references to the personal representatives in their capacity as having such functions as aforesaid.

(5) The expression ‘specific disposition’ means a specific devise or bequest made by a testator, and includes the disposition of personal chattels made by section forty-six of the Administration of Estates Act, 1925, and any disposition having, whether by virtue of any enactment or otherwise, under the law of another country an effect similar to that of a specific devise or bequest under the law of England.

Real estate included (either by a specific or general description) in a residuary gift made by the will of a testator shall be deemed to be a part of the residue of his estate and not to be the subject of a specific disposition.

(6) The expression ‘charges on residue’ means, in relation to the estate of a deceased person, the following liabilities properly payable thereout and interest payable in respect of those liabilities, that is to say,—

- (a) funeral, testamentary and administration expenses and debts;
- (b) general legacies (including in the case of an intestacy the sum of one thousand pounds charged by virtue of section forty-six of the Administration of Estates Act, 1925), demonstrative legacies and annuities; and
- (c) any other liabilities of his personal representatives as such; but, in the case of any such liabilities which, as between persons interested

- (b) for subsection (2) the following subsection shall be substituted :—

“(2) Such an interest shall, until the completion of the administration, be deemed to be an interest in the estate of the testator or intestate, as for the time being held by his personal representatives subject to outstanding charges on residue and to any adjustments between capital and income remaining to be made in a due course of administration”.

- (7) This section shall have effect, and shall be deemed always to have had effect, whether the person on whose death such an interest is limited to cease died before or dies after the commencement of this Act :

Provided that, in a case where that person died before the commencement of this Act and no estate duty was paid in respect of the cesser of that interest before the commencement of this Act, any question as to the operation of Part I of the Finance Act, 1894, in relation to his death shall be determined without regard to the provisions of this section.

48. Subsection (3) of section five of the principal Act (which provides that, in the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death) shall have effect, in the case of a person dying after the passing

under a specific disposition or in such a legacy as aforesaid or in an annuity and persons interested in the residue of the estate, fall exclusively or primarily upon the property that is the subject of the specific disposition or upon the legacy or annuity, includes only such part (if any) of those liabilities as falls ultimately upon the residue.

* * * * *

36.—(1) For the purpose of the application of this Part of this Act to Scotland—

- (i) any reference to the completion of the administration of an estate shall be construed as a reference to the date at which, after discharge of, or provision for, liabilities falling to be met out of the deceased's estate (including, without prejudice to the foreshaid generality, debts, legacies immediately payable, and legal rights of surviving spouse or children) the free balance held in trust for behoof of the residuary legatees has been ascertained;
- * * * * *
- (iii) the expression ‘ real estate ’ means heritable estate;
- (iv) for any reference to the sum of one thousand pounds charged by virtue of section forty-six of the Administration of Estates Act, 1925, there shall be substituted a reference to the sum of five hundred pounds to which a widow is entitled by virtue of the Intestate Husband's Estate (Scotland) Act, 1911;
- (v) the expression ‘ charges on residue ’ shall include in addition to the liabilities specified in subsection (6) of the last foregoing section any sums required to meet claims in respect of legal rights by surviving spouse or children.”

of this Act, as if there had been inserted at the end thereof the words “by reason only of the failure or determination of that interest”.

49. * * * * *

The Finance Act, 1939

(2 & 3 GEO. 6, c. 41)

[28th July, 1939.]

PART IV

ESTATE DUTY

29. In the case of persons dying after the twenty-fifth day of April, nineteen hundred and thirty-nine, the rates of Estate duty set out in the Second Schedule to the Finance Act, 1930, shall, so far as they relate to estates the principal value of which exceeds fifty thousand pounds, be increased, in the case of each rate, by one-tenth of the amount thereof ⁵⁴ :

* * * * *

30.—(1) Paragraph (d) of subsection (1) of section two of the Finance Act, 1894, (which provides that property passing on the death of a deceased person shall be deemed to include any annuity or other interest purchased or provided by the deceased) shall have effect in relation to an annuity or other interest that was purchased or provided wholly or in part by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased, as if that annuity or other interest had been provided by the deceased, or, if it is proved to the satisfaction of the Commissioners that the application of all the property derived from the deceased would have been insufficient to provide the whole of that annuity or other interest, as if a similar annuity or interest of an amount reduced to an extent proportionate to the insufficiency proved had been provided by the deceased :

Provided that for the purpose of determining whether there would have been any such insufficiency as aforesaid, and the extent thereof, there shall be excluded from the property derived from the deceased any part thereof as to which it is proved to the satisfaction of the Commissioners that the disposition of which it, or the property which it represented, was the subject matter was not made with reference to, or with a view to

⁵³ Repealed by F. A., 1940, s. 65 (8), as to deaths on or after June 27, 1940.

⁵⁴ Repealed by F. (No. 2) A., 1939, s. 23, as to deaths on or after September 27, 1939.

⁵⁵ Proviso repealed by F. (No. 2) A., 1940, s. 42 (8). and replaced by s. 17 thereof.

enabling or facilitating, the purchase or provision of the annuity or other interest, or the recoupment in any manner of the cost thereof.

(2) For the purpose of section four of the Finance Act, 1894, the deceased shall be deemed to have had an interest in any property included by virtue of this section in the property passing on the death of the deceased.

(3) In this section the following expressions have the meanings hereby assigned to them respectively, that is to say—

- (a) “property derived from the deceased” means any property which was the subject matter of a disposition made by the deceased, either by himself alone or in concert or by arrangement with any other person, [notwithstanding that the disposition was made⁵⁶] for full consideration in money or money’s worth paid to him for his own use or benefit, or which represented any of the subject matter of such a disposition, whether directly or indirectly, and whether by virtue of one or more intermediate dispositions, and whether any such intermediate disposition was or was not for full or partial consideration;
- (b) “disposition” includes any trust, covenant, agreement or arrangement; and
- (c) “subject matter” includes, in relation to any disposition, any annual or periodical payment made or payable under or by virtue of the disposition.

(4) This section shall have effect only in the case of a person dying after the twenty-fifth day of April, nineteen hundred and thirty-nine.

31.—(1) Any allowance which, but for this provision, would be made under subsection (1) of section seven of the Finance Act, 1894, for a debt incurred by the deceased as mentioned in paragraph (a) of that subsection, or for an incumbrance created by a disposition made by the deceased as therein mentioned, shall be subject to abatement to an extent proportionate to the value of any of the consideration given therefor which consisted of—

- (a) property derived from the deceased; or
- (b) consideration not being such property as aforesaid, but given by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased:

Provided that if, where the whole or a part of the consideration given consisted of such consideration as is mentioned in

⁵⁶ Words in square brackets substituted for “otherwise than” as to deaths on or after April 12, 1943, by F. A., 1943, s. 26, which also added a proviso (see below, p. 314).

paragraph (b) of this subsection, it is proved to the satisfaction of the Commissioners that the value of the consideration given, or of that part thereof, as the case may be, exceeded that which could have been rendered available by application of all the property derived from the deceased, other than such (if any) of that property as is included in the consideration given or as to which the like facts are proved in relation to the giving of the consideration as are mentioned in the proviso to subsection (1) of the last preceding section in relation to the purchase or provision of an annuity or other interest, no abatement shall be made in respect of the excess.

(2) Money or money's worth paid or applied by the deceased in or towards satisfaction or discharge of a debt or incumbrance in the case of which subsection (1) of this section would have had effect on his death if the debt or incumbrance had not been satisfied or discharged, or in reduction of a debt or incumbrance in the case of which that subsection has effect on his death, shall, unless so paid or applied [five] ⁵⁷ years before the death, be treated as property deemed to be included in the property passing on the death by virtue of paragraph (c) of subsection (1) of section two of the Finance Act, 1894, and Estate duty shall, notwithstanding anything in section three of that Act, be payable in respect thereof accordingly.

(3) The provisions of subsection (3) of the last preceding section shall have effect for the purpose of this section as they have effect for the purpose of that section.

(4) This section shall have effect only in the case of a person dying after the twenty-fifth day of April, nineteen hundred and thirty-nine.

* * * * *

38.—(1) This Act may be cited as the Finance Act, 1939.

* * * * *

(4) Part IV of this Act shall be construed as one with Part I of the Finance Act, 1894.

(5) Any reference in this Act to any other enactment shall, unless the contrary is expressly provided or the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(6) In this Act, the expression "the United Kingdom" does not include the Isle of Man.

⁵⁷ "Five" substituted for "three" by F. A., 1946, Sched. XI, as to deaths on or after April 10, 1946, subject to transitional provisions.

(7) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

The Finance (No. 2) Act, 1939

(2 & 3 GEO. 6, c. 109)

[12th October 1939.]

PART IV

ESTATE DUTY

23. In the case of persons dying after the twenty-seventh day of September, nineteen hundred and thirty-nine, section twenty-nine of the Finance Act, 1939 (which relates to the rates of Estate duty) shall not apply, and the rates of Estate duty set out in the Second Schedule to the Finance Act, 1930, shall—

- (a) so far as they relate to estates the principal value of which exceeds ten thousand pounds but does not exceed fifty thousand pounds, be increased, in the case of each rate, by one-tenth of the amount thereof; and
- (b) so far as they relate to estates the principal value of which exceeds fifty thousand pounds, be increased, in the case of each rate, by one-fifth of the amount thereof⁵⁸ :

* * * * *

PART V

GENERAL

24.—(1) This Act may be cited as the Finance (No. 2) Act, 1939.

* * * * *

(4) Part IV of this Act shall be construed as one with Part I of the Finance Act, 1894.

(5) Any reference in this Act to any other enactment shall, unless the contrary is expressly provided or the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(6) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

⁵⁸ Repealed as to deaths on or after July 24, 1940, by F. (No. 2) A., 1940, s. 16.

⁵⁹ Proviso repealed by F. (No. 2) A., 1940, s. 42 (8), and replaced by s. 17 thereof.

The Finance Act, 1940

(3 & 4 GEO. 6, c. 29)

[27th June 1940.]

PART IV

ESTATE DUTY

GENERAL

43.—(1) Subject to the provisions of this section, where an interest limited to cease on a death has been disposed of or has determined, whether by surrender, assurance, divesting, forfeiture, or in any other manner (except by the expiration of a fixed period at the expiration of which the interest was limited to cease), whether wholly or partly, and whether for value or not, after becoming an interest in possession [and the disposition or determination (or any of them if there are more than one) is not excepted by subsection (2) of this section, then ⁶⁰]

(a) if, [had there been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest,⁶¹] the property in which the interest subsisted would have passed on the death under section one of the Finance Act, 1894, that property shall be deemed by virtue of this section to be included as to the whole thereof in the property passing on the death; or

(b) if, [had there been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest,⁶¹] the property in which the interest subsisted would have been deemed by virtue of paragraph (b) of subsection (1) of section two of the said Act to be included to a particular extent in the property passing on the death, the property in which the interest subsisted shall be deemed by virtue of this section to be included to that extent in the property passing on the death.

(2) Where [a] ⁶² disposition or determination [of an interest limited to cease on the death ⁶⁰] was bona fide effected or suffered five ⁶³ years before the death (or, if it was effected or

⁶⁰ Words in square brackets inserted by F. A., 1950, s. 43, and Seventh Schedule as to deaths after April 18, 1950.

⁶¹ Words in square brackets substituted by F. A., 1950, s. 43 and Seventh Schedule for "apart from the disposition or determination".

⁶² Substituted for "the relevant" by F. A., 1950, s. 43, and Seventh Schedule.

⁶³ "Five" substituted for "three" by F. A., 1946, Eleventh Schedule, as to deaths on or after April 10, 1946.

suffered for public or charitable purposes, one year before the death), the [disposition or determination shall be excepted by this subsection ⁶⁴]

- (a) if bona fide possession or enjoyment ⁶⁵ of the property in which the interest subsisted was assumed immediately thereafter by the person becoming entitled by virtue of or upon the disposition or determination and thenceforward retained to the entire exclusion of the person who [⁶⁶ immediately before the disposition or determination] had the interest and of any benefit to him by contract or otherwise; or
- (b) in the case of a partial determination, if the conditions specified in the preceding paragraph were not satisfied by reason only of the retention or enjoyment by the deceased of possession of some part of the property, or of some benefit, by virtue of the provisions of the instrument under which he had the interest;

Provided that nothing in this subsection shall be construed as affecting any charge of estate duty arising otherwise than by virtue of the provisions of the preceding subsection.

(3) In the application of subsection (1) of this section to a case in which an incumbrance on the property in which the interest in question subsisted has been created by associated operations which included a disposition of that interest, references to that property shall be construed as references to that property free from the incumbrance, except in a case in which the incumbrance was created for consideration in money or money's worth which was applied for purposes calculated to maintain or increase the value of that property, and, in that case, shall be construed as references to that property subject to the incumbrance to the extent to which the consideration was so applied.

(4) In subsection (3) of section fifty-nine of the Finance (1909-10) Act, 1910 (which relates to a subsequent surrender of a benefit reserved), for the words "property taken under such a disposition or affected by such a surrender, assurance, divesting, or disposition as aforesaid" there shall be substituted the words "property taken under such a disposition as aforesaid or affected by such a disposition or determination as is mentioned in section forty-three of the Finance Act, 1940", for the words "the disposition, surrender, assurance, or divesting" there shall be substituted the words "the disposition or determination", and at the end of the subsection there shall be inserted the words "or the said section forty-three".

⁶⁴ Words in square brackets substituted by F. A., 1950, s. 43 and Seventh Schedule for "preceding subsection shall not have effect".

⁶⁵ Amended by F. A., 1950, s. 43 (2), as to deaths after April 18, 1950.

⁶⁶ Words in square brackets inserted by F. A., 1950, s. 43 and Seventh Schedule as to deaths after April 18, 1950.

(5) This section shall not apply to any such surrender, assurance, divesting or disposition, as is mentioned in proviso (c) to section fourteen of the Finance Act, 1914, so as to make any estate duty payable which would not have been payable but for the provisions of that section.

(6) This section shall have effect only in relation to a person dying after the commencement of this Act, and section eleven of the Finance Act, 1900, and sections thirty-five and thirty-nine of the Finance Act, 1930, shall not have effect in relation to such a person.

(7) This section shall *inter alia* apply in Scotland to the conveyance or discharge of any life rent, and to the propulsiion of the fee under any tailzied destination, and for the purposes of this section the interest of an institute or heir of entail in Scotland shall be deemed to be an interest limited to cease on a death.

44.—⁶⁷ [(1) Any disposition made by the deceased in favour of a relative of his shall be treated for the purposes of paragraph (c) of subsection (1) of section two of the Finance Act, 1894, as a gift unless—

- (a) the disposition was made on the part of the deceased for full consideration in money or money's worth paid to him for his own use or benefit; or
- (b) the deceased was concerned in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such capacity only; and references to a gift in the other enactments relating to estate duty (including this Part of this Act) shall be construed accordingly:

Provided that where the disposition was made on the part of the deceased for partial consideration in money or money's worth paid to him for his own use or benefit, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

(1A) Where the deceased made a disposition of property in favour of a relative of his, the creation or disposition in favour of the deceased of an annuity or other interest limited to cease on the death of the deceased or of any other person shall not be

⁶⁷ Sub-sections (1), (1A), (1B) and (1C) substituted by F. A., 1950, s. 46, for original sub-section as to deaths after April 18, 1950. The original sub-section was as follows :—

“Where a person dying after the commencement of this Act has made a disposition of property in favour of a relative of his, the creation or disposition in favour of the deceased of an annuity or other interest limited to cease on the death of the deceased or of any other person shall not be treated for the purposes of section three, or of subsection (1) of section seven, of the Finance Act, 1894, as consideration for the disposition made by the deceased.”

The substituted sub-sections must be read subject to the retrospective amendment of the original sub-section by F. A., 1944, s. 40.

treated for the purposes of this section or of subsection (1) of section seven of the Finance Act, 1894, as consideration for the disposition made by the deceased.

(1b) If a company to which this section applies was concerned in a transaction relating to which it is claimed that the provisions of paragraph (a) of or the proviso to subsection (1) of this section have effect, those provisions shall have effect in relation thereto if and only if, and to the extent only to which, the Commissioners are satisfied that those provisions would have had effect in the following circumstances, namely, if the assets of the company had been held by it on trust for the members thereof and any other person to whom it is under any liability incurred otherwise than for the purposes of the business of the company wholly and exclusively, in accordance with the rights attached to the shares in and debentures of the company and the terms on which any such liability was incurred, and if the company had acted in the capacity of a trustee only with power to carry on the business of the company and to employ the assets of the company therein.

(1c) Any gift made in favour of a relative of the deceased by a company of which the deceased at the time of the gift had control within the meaning of subsection (3) of section fifty-five of this Act shall be treated for the purposes of paragraph (c) of subsection (1) of section two of the Finance Act, 1894, as a gift made by the deceased, and the property taken under the gift shall be treated as included by virtue of that paragraph in the property passing on the death of the deceased, if and to the extent to which the Commissioners are satisfied that they would fall to be so treated in the circumstances mentioned in the last foregoing subsection].

(2) In this section the expression "relative" means, in relation to the deceased,—

(a) the wife or husband of the deceased;

(b) the father, mother, children, uncles and aunts, of the deceased; and

(c) any issue of any person falling within either of the preceding paragraphs and the other party to a marriage with any such person or issue;

and references to "children" and "issue" include references to illegitimate children and to adopted children.

(3) In this section the expression "annuity" includes any series of payments, whether inter-connected or not, whether of the same or of varying amounts, and whether payable at regular intervals or otherwise, and payments of dividends or interest on shares in or debentures of a company shall be treated for the purposes of this section as a series of payments constituting an annuity limited to cease on a death if the payments are liable

to cease on the death, or the amounts thereof are liable to be reduced on the death, by reason directly or indirectly of the extinguishment or any alteration of rights attaching to, or of the issue of, any shares in or debentures of a company.

(4) If the deceased has made in favour of a company to which this section applies a disposition which, if it had been made in favour of a relative of his, would have fallen within subsection (1) of this section, this section shall have effect in like manner as if the disposition had been made in favour of a relative of his, unless it is shown to the satisfaction of the Commissioners that no relative of the deceased was, at the time of the disposition or subsequently during the life of the deceased, a member of the company.

For the purposes of this subsection a person who is, or is deemed by virtue of this provision to be, a member of a company to which this section applies and which is a member of another such company shall be deemed to be a member of that other company.

(5) Where there have been associated operations effected with reference to the receiving by the deceased of any payment in respect of such an annuity or other interest as is mentioned in subsection (1A)⁶⁸ of this section, or effected with a view to enabling him to receive or to facilitating the receipt by him of any such payment, this section shall have effect in relation to each of those associated operations as it has effect in relation to the creation or disposition in favour of the deceased of such an annuity or other interest.

45.—(1) The creation by a person or with his consent of a debt or other right enforceable against him personally or against property of which he was or might become competent to dispose, or to charge or burden for his own benefit, shall be deemed for the purposes of the enactments relating to estate duty, including this Part of this Act, to have been a disposition made by that person, and in relation to such a disposition the expression “property” in the said enactments shall include the debt or right created.

(2) The extinguishment at the expense of the deceased of a debt or other right shall be deemed for the purposes of the said enactments to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression “property” in the said enactments shall include the benefit conferred by the extinguishment of the debt or right.

(3) The proviso to section four of the Finance Act, 1894 (which excepts from aggregation property in which the deceased never had an interest) shall not have effect in relation to property

⁶⁸ Substituted for “subsection (1)” by F. A., 1950, s. 46 (2) (a).

passing on the death of the deceased which consists of a debt or right or benefit that is treated as property by virtue of this section.

Estate duty in respect of deceased's benefits from certain companies

46.—(1) Where a person dying after the commencement of this Act has made to a company to which this section applies a transfer of any property (other than an interest limited to cease on his death or property which he transferred in a fiduciary capacity), and any benefits accruing to the deceased from the company accrued to him in the five years⁶⁹ ending with his death, the assets of the company shall be deemed for the purposes of estate duty to be included in the property passing on his death to an extent determined, in accordance with subsection (2) of this section, by reference to the proportion that the aggregate amount of the benefits accruing to the deceased from the company bore to the net income of the company.

[(2) The extent to which the assets of the company are to be deemed to be included as aforesaid shall be the proportion ascertained by comparing the aggregate amount of the benefits accruing to the deceased from the company in the last five accounting years with the aggregate amount of the net income of the company for the said years :

Provided that—

- (a) where, in any of the said accounting years, the company sustained a loss, the amount of that loss shall be deducted in ascertaining the said aggregate net income of the company;
- (b) where the company came into existence in the last but three, or in the last but two, or in the last but one, or in the last, of the said accounting years, the references in this subsection to the said accounting years shall be construed as references to the last four, the last three, the last two or the last, of those years, as the case may be.]⁷⁰

⁶⁹ "Five" substituted for "three" by F. A., 1946, Eleventh Schedule, as to deaths on or after April 10, 1946.

⁷⁰ Sub-section in square brackets substituted by F. A., 1946, Eleventh Schedule, as to deaths on or after April 10, 1946, for that previously in force, viz., that substituted by F. A., 1944, s. 35, as to deaths on or after July 13, 1944. The original sub-section was as follows:—

"(2) The proportion aforesaid shall be ascertained for each accounting year that fell wholly or partly within the three years ending with the death, by comparing the aggregate amount of the benefits accruing to the deceased from the company which accrued to him in that year with the net income of the company for that year, and the extent to which the assets of the company are to be deemed to be included in the property passing on the death shall be the average of the proportions so ascertained :

Provided that, if the company came into existence in the last but one,

(3) The assets of the company which are deemed to be included in the property passing on the death of the deceased by virtue of this section shall include any assets thereof which have been disposed of or distributed by the company at any time between the beginning of the first of the accounting years aforesaid and the death of the deceased, either—

- (a) in or towards satisfaction of rights attaching to shares in or debentures of the company, or
- (b) otherwise howsoever except as follows, that is to say, by way of sale for full consideration in money or money's worth received by the company for its own use and benefit, or in or towards discharge of taxes or rates or other liability imposed by or under an enactment, or in or towards discharge of a fine or penalty or of a liability for tort incurred without collusion with the injured party, including assets which have been so disposed of or distributed in a winding up, whether continuing at or completed before the death :

Provided that this subsection shall not apply to assets disposed of or distributed by way of payments from which income tax was deductible, or which were assessable to income tax, of amounts not exceeding in the aggregate, as respects payments made in any accounting year or in the period between the end of the last accounting year and the death of the deceased, the amount of the income of the company for that year or period.

(4) This section shall have effect subject to and in accordance with the succeeding provisions of this Part of this Act, and the provisions contained in the Seventh Schedule to this Act shall have effect for the purpose of supplementing and interpreting this section and the succeeding provisions of this Part of this Act.

(5) Sections thirty-four, thirty-six, and thirty-eight, of the Finance Act, 1930, shall not have effect in relation to a person dying after the commencement of this Act.

47.—(1) The following shall be treated as benefits accruing to the deceased from the company, that is to say—

- (a) any income of the company, and any periodical payment out of the resources or at the expense of the company, which the deceased received for his own benefit whether directly or indirectly, and any enjoyment in specie of

or in the last, of the accounting years aforesaid, the extent to which the assets of the company are to be deemed to be included as aforesaid shall be the average of the proportions ascertained under this subsection for the last two of those years, or shall be the proportion so ascertained for the last of those years, as the case may require."

land or other property of the company or of a right thereover which the deceased had for his own benefit whether directly or indirectly;

- (b) any such income or payment or enjoyment which the deceased was entitled to receive or have as aforesaid; and
- (c) any such income or payment or enjoyment which the deceased could have become entitled to receive or have as aforesaid by an exercise in the five years⁷¹ ending with his death of any power exercisable by him or with his consent;

and where the deceased could, by an exercise in the said five years⁷¹ of any such power as aforesaid, have become entitled to receive as aforesaid any payment out of the resources or at the expense of the company not being a periodical payment, but did not in fact receive or become entitled to receive that payment, there shall be treated as a benefit accruing to the deceased from the company interest on that payment at the average rate from the earliest date on which he could have become entitled to receive it.

(2) In this Part of this Act the expression "periodical payment" means a payment by way of dividend or interest, a payment by way of remuneration not being a single lump sum payment, and any other payment, being one of a series of payments, whether inter-connected or not, whether of the same or of varying amounts, and whether payable at regular intervals or otherwise.

(3) The amounts to be taken into account for the purposes of subsection (2) of section forty-six of this Act in respect of benefits accruing to the deceased from the company, and the time at which such a benefit is to be treated for the purposes of that section as having accrued to him, shall be determined in accordance with the provisions of paragraphs 1 and 2 respectively of the Seventh Schedule to this Act.

48.—(1) Subject to the provisions of subsection (3) of this section, if the deceased has made, whether for value or not, a surrender of his title to receive any such income or payment or enjoyment as is mentioned in the last preceding section, or of any such power as is therein mentioned, the last preceding section shall have effect as if the surrender had not been made.

(2) The deceased shall be deemed to have made such a surrender as aforesaid if a right which he had to receive any such income or payment or enjoyment as aforesaid, or if any such power as aforesaid, has been extinguished or suspended by the effect solely or partly of any disposition made by him or with

⁷¹ "Five" substituted for "three" by F. A., 1946, Eleventh Schedule, as to deaths on or after April 10, 1946.

his consent of shares in or debentures of a company or of any other property or right, or of the exercise or the leaving unexercised by him or with his consent of any power or right, or of the extinguishment or suspension by him or with his consent of any power or right, otherwise than in a fiduciary capacity, or if apart from such a disposition or other act or omission he would have become entitled to receive any such income or payment or enjoyment as aforesaid but by the effect solely or partly thereof he did not become entitled to receive it.

(3) This section shall not apply to a surrender made bona fide before the beginning of the five⁷² years ending with the death of the deceased (or, if it was made for public or charitable purposes, before the beginning of the year ending with his death) if the deceased was at all times during those five⁷² years, or during that year, as the case may be, entirely excluded from receiving, or being entitled to receive, or having any capacity by an exercise of any power exercisable by him or with his consent to receive, any periodical payment by virtue of the surrender or of any associated operations of which the surrender was one.

49. The income of the company for any accounting year, or for the period between the end of the last accounting year and the death of the deceased, shall be determined by computing the amount of the income of the company from each source in accordance with the provisions of the Income Tax Acts relating to the computation of income from such a source (subject to the modification that the computation shall be made by reference to the actual income for that year or period, and not by reference to the income for any other period), and the net income of the company for any accounting year shall be determined by deducting⁷³ from the income of the company for that year the aggregate of the amounts of—

- (a) the liabilities of the company for that year in respect of any kind of payment from which income tax is deductible, or which is assessable to income tax, but excluding liabilities in respect of any dividend on shares of or interest on debentures in the company and liabilities incurred otherwise than for the purposes of the business of the company wholly and exclusively;
- (b) any income of the company for that year of a kind in respect of which repayment of income tax can be claimed under section thirty-three of the Income Tax Act, 1918, or otherwise; and
- (c) any deduction or set off that could have been claimed for income tax purposes if the computation of the income of

⁷² "Five" substituted for "three" by F. A., 1946, Eleventh Schedule, as to deaths on or after April 10, 1946.

⁷³ Amended as to deductions by F. A., 1944, s. 39.

the company had been made by reference to the assessable income for that year and not to the actual income :

Provided that there shall be excluded from the computation of the income of the company any income thereof which was neither bona fide earned in the ordinary course of business nor the produce of income-yielding assets held by it.

50.—(1) In determining the value of the estate for the purpose of estate duty the provisions of subsection (1) of section seven of the Finance Act, 1894, as to making allowance for debts and incumbrances shall not have effect as respects any debt or incumbrance to which assets of the company passing on the death by virtue of section forty-six of this Act were liable, but the Commissioners shall make an allowance from the principal value of those assets for all liabilities of the company (computed, as regards liabilities which have not matured at the date of the death, by reference to the value thereof at that date, and, as regards contingent liabilities, by reference to such estimation as appears to the Commissioners to be reasonable) other than—

- (a) liabilities in respect of shares in or debentures of the company ; and
- (b) liabilities incurred otherwise than for the purposes of the business of the company wholly and exclusively.

(2) In estimating the principal value of the said assets the Commissioners shall fix the price thereof on the basis of a sale of the business of the company as a going concern.

(3) Where the said assets include any distributed assets, if partial consideration (other than the extinguishment, or an alteration, of rights attaching to shares in or debentures of a company to which section forty-six of this Act applies) was given for the distribution in money or money's worth received by the company for its own use and benefit, a further allowance shall be made, in addition to the allowances specified in subsection (1) of this section, of an amount equal to the value of the consideration given.

(4) For the purpose of the estimation of the principal value of any distributed assets subsection (5) of section seven of the Finance Act, 1894, and subsection (2) of section sixty of the Finance (1909–10) Act, 1910, shall have effect with the substitution for the reference therein to the time of the death of the deceased of a reference to the time of the distribution, and effect shall be given to the proviso to the said subsection (2) (which relates to depreciation by reason of the death of the deceased) as at the time of the distribution only, due regard being had to the expectation of life of the deceased at that time.

51.—(1) If it is shown to the satisfaction of the Commissioners that—

- (a) the value of all such property as is mentioned in subsection (1) of section forty-six of this Act, of which the

deceased made a transfer to the company, together with an amount equal to any excess of interest at the average rate on the value thereof from the date or respective dates of transfer to the death of the deceased over the aggregate amount of the benefits received by the deceased by virtue of the transfer, is less than—

- (b) the value on which estate duty would be chargeable on the death under the said section if all benefits accruing to him from the company other than the benefits received by him by virtue of the transfer were disregarded,

an amount equal to the deficiency shall be deducted from the proportion of the value of the company's assets that corresponds to the benefits received by him by virtue of the transfer.

References in this subsection to benefits received by the deceased by virtue of a transfer shall be construed as references to benefits accruing to him from the company which he received or had as consideration for the transfer, or in consequence of his having received as consideration therefor shares or debentures or other property which produced any of those benefits.

[(1A) Where the following conditions are satisfied, that is to say, that the deceased has, within five years before his death, disposed of any shares in or debentures of the company for consideration in money or money's worth paid to him for his own use or benefit, and that any benefits accrued to the deceased from the company by virtue of those shares or debentures or by virtue of a power's having been exercisable by him or with his consent in relation to those shares or debentures, then—

- (a) if the value of the said consideration is equal to or greater than the proportion of the value of the company's assets that corresponds to the benefits that so accrued to him, or if the Commissioners are satisfied that the said proportion would not, if fully ascertained, be found to be substantially in excess of the value of the said consideration, duty on the said proportion shall not be payable :
- (b) in any other case, the amount on which duty is to be charged in respect of the said proportion shall be reduced by the amount of the value of the said consideration :

Provided that, in the case of any shares or debentures,—

- (i) this subsection shall not apply where estate duty is payable on the death on their value or any part thereof or would be so payable but for an exemption from estate duty ; and
- (ii) for the purposes of determining to what extent, if any, the disposition of them satisfies the conditions of this subsection, section fifty-six of this Act (which relates

to transactions through the medium of a company) shall apply as it applies for the purposes of section three of the Finance Act, 1894.] ⁷⁴

[⁷⁵ (2) Where the following conditions are satisfied, that is to say, that any benefits accrued to the deceased from the company by virtue of any interest that he at any time had in shares in or debentures of the company, or by virtue of a power's having at any time been exercisable by him or with his consent in relation to shares in or debentures of the company, and apart from this subsection estate duty would be payable on the death both on the value of those shares or debentures by virtue of any of the enactments relating to that duty other than section forty-six of this Act and on the proportion of the value of the company's assets that corresponds to the benefits that so accrued to him by virtue of that section, then—

(a) if the value of the shares or debentures is equal to, or greater than, the said proportion, or if the Commissioners are satisfied that the said proportion would not, if fully ascertained, be found to be substantially in excess of the value of the shares or debentures, duty on the said proportion shall not be payable;

(b) in any other case, the amount on which duty is to be charged in respect of the said proportion shall be reduced by the amount of the value of the shares or debentures.

(2A) Where the conditions set out in the last preceding subsection would be satisfied but for the fact that, by reason of an exemption from estate duty (not being an exemption on the ground that the deceased or other person having an interest in

⁷⁴ Sub-section (1A) inserted by F. A., 1950, s. 47, as to deaths on or after July 28, 1950.

⁷⁵ Passage in square brackets substituted for the original sub-section by F. A., 1944, s. 38, as regards deaths on or after July 18, 1944. The original sub-section was as follows :—

“(2) Where any benefits accrued to the deceased from the company by virtue of any interest that he at any time had in shares in or debentures of the company, or by virtue of a power's having at any time been exercisable by him or with his consent in relation to shares in or debentures of the company, and apart from this subsection estate duty would be payable on the death both on the value of those shares or debentures by virtue of any of the enactments relating to that duty other than section forty-six of this Act and on the proportion of the value of the company's assets that corresponds to the benefits that so accrued to him by virtue of that section,—

(a) if the value of the shares or debentures is equal to or greater than the said proportion, or if the Commissioners are satisfied that the said value and the said proportion would not if fully ascertained be found to be substantially different, the duty on the said proportion shall not be payable;

(b) in any other case the duty on the said proportion shall be payable, and the duty on the value of the shares or debentures shall not be payable, so however that it shall, for the purposes of the said other enactments, be deemed to have been paid by virtue of the payment of the duty on the said proportion.”

the shares or debentures ceasing on the death of the deceased had only an interest as the holder of an office), that duty is not payable on the value of the shares or debentures, paragraphs (a) and (b) of that subsection shall apply as if that exemption did not operate and as if the duty had been payable on the value of the shares and debentures accordingly :

Provided that where—

- (a) the exemption in question depends on a payment of any duty on an earlier death, or does not depend on such a payment but depends wholly or partly on any dispositions having been made; and
- (b) since the date of that death or disposition, as the case may be, the shares or debentures have been substantially increased in value by reason of a transfer of property to any company by any person or by reason of the extinguishment of, or any alteration of the rights attaching to, shares in or debentures of any company,

then, unless the exemption takes the form of a deduction from the value of the shares or debentures of a fixed amount which is independent of the value of the shares or debentures, the references in paragraphs (a) and (b) of the last preceding subsection to the value of the shares or debentures therein mentioned shall have effect as if they were references to the value thereof reduced to the extent to which, in the opinion of the Commissioners, that value is attributable to that transfer, extinguishment or alteration.

(2B) Where, by reason of an exemption from estate duty, that duty is payable on part only of the value of the shares or debentures, subsection (2) of this section shall, with the necessary adaptations, be applied to the part of the value of the shares or debentures affected by the exemption; and, where there are two or more exemptions from estate duty each of which operates on part only of the value of the shares or debentures and the exemptions are such that the said subsection (2A) would operate differently in relation to them, then, whether or not estate duty is payable, the said subsection (2A) shall, with the necessary adaptations, be applied separately in relation to the parts of the value of the shares or debentures affected by each exemption.

(2c) In this section the expression "exemption from estate duty" includes any exemption conferred by any provision of the enactments relating to estate duty which has the effect of exempting property, in whole or in part, from that duty, whether that provision takes the form that the property is not to be deemed to pass, or the form that the duty is not to be payable, or the form that a deduction is to be made from the value of the property, or any other form; and the reference in paragraph (b)

of the proviso to subsection (2A) of this section to an increase in the value of shares or debentures includes, where those shares or debentures have been acquired in substitution for any other property, any increase in the value of any property which those shares or debentures directly or indirectly represent.]

(3) References in this section to the proportion of the value of the company's assets that corresponds to any particular benefits shall be construed as references to so much of the value on which estate duty is chargeable on the death by virtue of section forty-six of this Act as is chargeable by reason of the bringing of those benefits into the computation made under subsection (2) of that section.

(4) So much of any income or periodical payment or enjoyment of a kind mentioned in section forty-seven of this Act as is shown to the satisfaction of the Commissioners to have represented, or to have been such that it would if received have represented, reasonable remuneration to the deceased for any services rendered by him as the holder of an office under the company shall, notwithstanding anything in that section, not be treated for the purposes of this Part of this Act as a benefit accruing to the deceased from the company; and any liability of the company in respect of the remuneration of any person as the holder of an office under the company shall be treated for the purposes of this Part of this Act as incurred for the purposes of the business of the company wholly and exclusively to the extent to which it is shown to the satisfaction of the Commissioners that the amount thereof was reasonable, and to that extent only.

52. For the purposes of section four of the Finance Act, 1894, the deceased shall be deemed to have had an interest in the property deemed by virtue of section forty-six of this Act to be included in the property passing on his death.

53.—(1) The company shall be under obligation to inform the Commissioners, within one month from the date of the death of the deceased, of the death, of the fact that the deceased made a transfer of property to the company, and of the fact that benefits accrued to the deceased from the company, and every person who was an officer of the company at that date, or, if the company has been wound up and dissolved before that date, who was an officer of the company at any time, shall be under the like obligation as respects such of the facts aforesaid as are within his knowledge, unless he knows, or has reasonable cause for believing, that the information in question has already been given to the Commissioners by the company or some other person.

(2) If the company or any such person as aforesaid who is under obligation by virtue of the preceding subsection to give any information to the Commissioners makes default in the performance of that obligation, the defaulter shall be liable to a penalty not exceeding five hundred pounds.

54.—(1) The following persons shall be accountable for the duty payable on the death of the deceased by virtue of section forty-six of this Act, that is to say—

(a) the company;

(b) any person (other than a bona fide purchaser for full consideration in money or money's worth received by the company for its own use and benefit) who receives, whether directly from the company or otherwise, or disposes of, any assets which the company had, whether as capital or as income, at the death or at any time thereafter;

(c) any person who received any distributed assets of the company on their distribution :

Provided that a person shall not,—

(i) by virtue of paragraph (b) of this subsection, be accountable in respect of any assets for any duty in excess of the value of those assets, or

(ii) by virtue of paragraph (c) of this subsection, be accountable in respect of any assets for more than a part of the duty bearing to the whole thereof the same proportion that the value of the distribution of those assets bears to the principal value of the assets of the company passing on the death by virtue of section forty-six of this Act after making the allowances to be made under section fifty of this Act.

For the purposes of this subsection the expressions “distributed assets” and “assets of the company passing on the death” do not include any distributed assets of the company which the deceased received on their distribution; and a person who, having received any distributed assets of the company, has died before the deceased shall be deemed to have been a person accountable by virtue of paragraph (c) of this subsection.

(2) Where a company incorporated outside the United Kingdom is accountable for any duty by virtue of the preceding subsection or of this subsection, every person who is a member of that company at the death shall also be accountable for a rateable part of that duty in proportion to the value of his interest in that company.

(3) A person accountable for any duty by virtue of this section shall, for the purpose of raising and paying the duty, have all the powers conferred on accountable parties by Part I of the Finance Act, 1894.

(4) On a winding up of the company subsection (1) of section two hundred and sixty-four of the Companies Act, 1929 ^{75a} (which determines what debts shall have priority over other debts in a winding up) shall have effect as if there were included in paragraph (a) of that subsection a reference to any duty payable in respect of assets of the company passing on a death by virtue of section forty-six of this Act, and section seventy-eight of the Companies Act, 1929, ^{75b} shall have effect accordingly.

(5) The duty payable on the death of the deceased by virtue of section forty-six of this Act shall be a first charge by way of floating security on the assets which the company had at the death or has at any time thereafter, and any part of the duty for which by virtue of paragraph (c) of subsection (1) of this section any person is accountable in respect of any distributed assets shall be a first charge also on those assets :

Provided that nothing in this subsection shall operate to make any property chargeable as against a bona fide purchaser thereof for valuable consideration without notice.

(6) Where any duty has been—

(a) paid by a person accountable therefor by virtue only of paragraph (c) of subsection (1) of this section; or

(b) raised by virtue of subsection (5) of this section out of any distributed assets charged therewith;

that person or, as the case may be, the person who was entitled to those assets subject to the charge, may (without prejudice to any right of contribution or indemnity which he may have apart from this subsection) recover the amount of the duty so paid or raised as aforesaid from any person who is accountable therefor otherwise than by virtue of the said paragraph (c).

(7) No part of the duty paid by the company shall be recoverable by it from any person on the ground only that he is entitled to any interest in, or to any sum charged on, the assets which the company had at the death of the deceased.

(8) The following provisions of the Finance Act, 1894, shall not have effect in relation to the duty payable by virtue of section forty-six of this Act, that is to say—

(a) so much of subsection (2) of section six as relates to payment of estate duty on personal property of which the deceased was competent to dispose at his death; and

(b) so much of subsection (3) of section eight as relates to the accountability of the executor of the deceased in respect of personal property of which the deceased was competent to dispose at his death, and subsection (4) of that section; and subsection (1) of section nine of the said Act shall have effect

^{75a} Now replaced by Companies Act, 1948, s. 819.

^{75b} Now replaced by Companies Act, 1948, s. 95.

in relation to the estate as if the property passing by virtue of section forty-six of this Act had been property passing to the executor as such.

(9) Subsection (5) of this section in its application to Scotland shall have effect as if the provisions thereof relating to a charge by way of floating security on the assets of the company were omitted.

General provisions as to certain companies

55.—(1) Where for the purposes of estate duty there pass, on the death of a person dying after the commencement of this Act, shares in or debentures of a company to which this section applies, then if—

- (a) the deceased had the control of the company at any time during the five years⁷⁶ ending with his death; or
- (b) dividends which were declared by the company for any period falling wholly or partly within those five years,⁷⁶ or which, not having been declared for any particular period, were declared at a time within those five years,⁷⁶ together with any amounts which accrued due during any period falling wholly or partly within those five years⁷⁶ for interest on debentures of the company, are, as to amounts forming in the aggregate more than one-half of the total amount of such dividends and interest, to be treated by virtue of any of the provisions of sections forty-seven and forty-eight of this Act as benefits accruing to the deceased from the company, or would have fallen to be so treated if the deceased had made a transfer of property to the company; or
- (c) the deceased had at any time during those five years⁷⁶ a beneficial interest in possession in shares in or debentures of the company, or in both, of an aggregate nominal amount representing one-half or more of the aggregate nominal amount of the shares in and debentures of the company then issued and outstanding, and no one other person had at that time the control of the company;

the principal value of the shares or debentures, in lieu of being estimated in accordance with the provisions of subsection (5) of section seven of the Finance Act, 1894, shall be estimated by reference to the net value of the assets of the company in accordance with the provisions of the next succeeding subsection.

(2) For the purposes of such ascertainment as aforesaid—

- (a) the net value of the assets of the company shall be taken to be the principal value thereof estimated in accordance with the said subsection (5), less the like allowance for liabilities of the company as is provided

⁷⁶ "Five" substituted for "three" by F. A., 1946, Eleventh Schedule, as to deaths on or after April 10, 1946.

by subsection (1) of section fifty of this Act in relation to the assets of a company passing on a death by virtue of section forty-six of this Act, but subject to the modification that allowance shall be made for such a liability as is mentioned in paragraph (b) of that subsection unless it also falls within paragraph (a) thereof ;

- (b) the aggregate value of all the shares and debentures of the company issued and outstanding at the death of the deceased shall be taken to be the same as the net value of the assets of the company ;
- (c) in a case in which there are both shares in and debentures of the company issued and outstanding at the death, or different classes of either, the net value of the assets of the company shall be apportioned between them with due regard to the rights attaching thereto respectively ; and
- (d) the value of any share, or of any debenture, or of a share or debenture of any class, shall be a rateable proportion, ascertained by reference to nominal amount, of the net value of the assets of the company as determined under paragraph (a) of this subsection. or, in the case mentioned in paragraph (c) of this subsection, of the part thereof apportioned under that paragraph to the shares of the company, or to its debentures, or to that class thereof, as the case may be.

(3) For the purposes of this section a person shall be deemed to have had control of a company at any time if he then had—

- (a) the control of powers of voting on all questions, or on any particular question, affecting the company as a whole which if exercised would have yielded a majority of the votes capable of being exercised thereon ; or
- (b) the capacity to exercise, or to control the exercise of any of the following powers, that is to say, the powers of a board of directors or of a governing director of the company, power to nominate a majority of directors or a governing director thereof, power to veto the appointment of a director thereof, or powers of a like nature ;

or if he could have obtained such control or capacity by an exercise at that time of a power exercisable by him or with his consent.

(4) This section shall not apply to the valuation of shares or debentures of a class as to which permission to deal has been granted by the committee of a recognised stock exchange in the United Kingdom and dealings in the ordinary course of business on that stock exchange have been recorded during the year ending with the death of the deceased, and, in making an apportionment under paragraph (c) of subsection (2) of this

section in the case of a company having shares or debentures of such a class, the part of the value of the assets of the company to be apportioned to shares or debentures of that class shall be determined by reference to the prices recorded on such dealings.

(5) Control of a company which a person had in a fiduciary capacity shall be disregarded for the purposes of this section.

(6) In this section references to the assets of a company shall be construed as references to the assets that it had at the death of the deceased.

(7) Section thirty-seven of the Finance Act, 1930, shall not have effect in relation to a person dying after the commencement of this Act.

56.—(1) For the purposes of section three of the Finance Act, 1894 (which relates to exceptions for transactions for money consideration), if a company to which this section applies was concerned in a transaction in relation to which it is claimed that the provisions of that section have effect, or in any one or more of associated operations of which that transaction formed one, those provisions shall have effect in relation thereto if and only if, and to the extent only to which, the Commissioners are satisfied that those provisions would have had effect in the following circumstances, namely, if the assets of the company had been held by it on trust for the members thereof and any other person to whom it is under any liability incurred otherwise than for the purposes of the business of the company wholly and exclusively, in accordance with the rights attaching to the shares in and debentures of the company and the terms on which any such liability was incurred, and if the company had acted in the capacity of a trustee only with power to carry on the business of the company and to employ the assets of the company therein.

(2) Where a company to which this section applies was concerned in the disposition or determination of an interest limited to cease on a death effected or suffered as mentioned in subsection (2) of section forty-three of this Act, or in a surrender made as mentioned in subsection (3) of section forty-eight of this Act, or was concerned in any one or more of associated operations of which the disposition or determination or surrender formed one, the conditions as to the entire exclusion of the person who had the interest or of the deceased, and of any benefit to him, specified in the said subsection (2) or in the said subsection (3) as the case may be, shall be treated as having been satisfied if and only if they would have been so treated in the circumstances aforesaid.

57.—(1) The provisions of subsection (5) of section eight of the Finance Act, 1894 (which relate to the delivery of particulars relating to property forming part of an estate in respect of which

estate duty is leviable on a death) shall, on a death on which it appears to the Commissioners that section forty-six or fifty-five of this Act has effect, apply to the company, and to any other company to which the said section forty-six or fifty-five, as the case may be, applies, and to every person who is or was at any time an officer or auditor of that company or of any such other company, as those provisions apply to a person who has administered any part of the estate.

(2) Subsection (6) of section eight of the Finance Act, 1894 (which relates to the penalty for a failure to comply with any of the provisions of subsection (5) of that section) shall have effect as respects a failure to comply with any of the said provisions as applied by the preceding subsection the substitution of five hundred pounds for one hundred pounds.

(3) An order may be made against any person who fails to comply with any of the provisions of subsection (5) of section eight of the Finance Act, 1894, as applied by subsection (1) of this section requiring him to comply with those provisions, in like manner as an order to deliver an account may be made against any person who is accountable for succession duty or legacy duty, and the provisions of section fifty-five of the Crown Suits, etc., Act, 1865, and in Scotland the provisions of section forty-seven of the Succession Duty Act, 1853, shall apply accordingly subject to the necessary modifications.

Interpretation and definitions

58.—(1) The companies to which sections forty-four, forty-six, fifty-five and fifty-six of this Act respectively apply are any company which, at any relevant time, was, or would on the assumptions hereinafter mentioned have been, deemed for the purposes of subsection (6) of section twenty-one of the Finance Act, 1922, to be under the control of not more than five persons, and for the purposes of this subsection—

(a) the expression “relevant time” means any time during the period ending with the death of the deceased and beginning, as respects the said section fifty-five, five years⁷⁷ before his death, and, as respects each of the others of the said sections of this Act, at the date of the disposition transfer or other transaction or event relevant for the purposes of that section, or, if that disposition transfer or other transaction or event was one of associated operations, at the date of the earliest of those operations; and

(b) the assumptions hereinbefore mentioned are—

(i) that subsection (3) of section nineteen of the Finance Act, 1936, had, with any necessary adaptations,

⁷⁷ “Five” substituted for “three” by F. A., 1946, Eleventh Schedule, as to deaths on or after April 10, 1946.

applied in relation to companies incorporated outside the United Kingdom as it applies in relation to companies other than companies within the meaning of the Companies Act, 1929, or any corresponding enactment in force in Northern Ireland, and

- (ii) that, subject as aforesaid, the provisions of section twenty-one of the Finance Act, 1922, and of any other Act relating to the said section twenty-one, as those provisions were in force immediately before the passing of this Act, had always been in force and so in force and had remained so in force until the date of the death.

(2) A person shall be deemed for the purposes of this Part of this Act to have made a transfer of property to a company if the property came to be included in the resources of the company by the effect of a disposition made by him or with his consent or of any associated operations of which such a disposition formed one. *

(3) A person shall be deemed to have received or had any payment, income, enjoyment, assets, or interest, the receipt or having whereof by him is relevant for the purposes of this Part of this Act, if any of the following conditions have been satisfied in relation thereto, that is to say,—

- (a) if the relevant payment or other matter has been applied in any manner for the benefit of that person, or has been dealt with by that or any other person in any manner calculated to cause it to inure for the benefit of that person at any time, whether in the form of income or not, or if any property which was or would be available for the purpose by reason of the effect or successive effects of any one or more of associated operations relating to the relevant payment or other matter has been so applied or dealt with;
- (b) if any advantages received or to be received at any time by that person have been provided out of that payment or other matter, or out of any such property as aforesaid;
- (c) if that person became able in any manner to control the application of the relevant payment or other matter, or of any such property as aforesaid, otherwise than in a fiduciary capacity;
- (d) if the relevant payment or other matter, or any such property as aforesaid, has been applied in any manner so as to increase the value to that person of any property in which he was beneficially interested; or
- (e) as respects such income as is mentioned in subsection (1) of section forty-seven of this Act, if the receipt by, or accrual to, the company of that income operated in

any manner so as to increase the value to that person of any property in which that person was beneficially interested, so however that the amount of the income which that person is to be treated as having received by virtue of this paragraph shall be limited to the amount of the increase in value of the property in question; and references in this Part of this Act to the deceased's receiving or having, or being or becoming entitled to receive or have, any such payment or other matter as aforesaid shall be construed accordingly.

(4) References in this Part of this Act to a disposition's being made by any person, to a power's being exercised or exercisable by any person, or to any other act's being done by any person, include references to its being made, or being exercised or exercisable, or being done, by him and another jointly or by another at his direction or by a company of which he had control within the meaning of subsection (3) of section fifty-five of this Act, whether with or without the consent of any other person; references importing an omission on the part of any person in relation to any such matter as aforesaid shall be construed in like manner; and references in relation to any such matter as aforesaid to its being made, or being exercised or exercisable, or being done or omitted, with the consent of any person include references to its being made, or being exercised or exercisable, or being done or omitted, at his request or with or subject to his acquiescence.

(5) References in this Part of this Act to a person having any power or control or doing any act in a fiduciary capacity shall be construed as references to his having that power or control or doing that act in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only.

(6) References in the enactments relating to estate duty (including this Part of this Act) to an interest's being limited to cease on a death shall be construed as including references to its being subject to a limitation, in whatsoever form, having the effect of providing in the alternative for its cesser on the death or on the occurrence of some event, or the expiration of some period, before the death.

59. In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

“Accounting year” has the meaning assigned to it by paragraph 6 of the Seventh Schedule to this Act;

“Assets” includes goodwill;

“Associated operations” means any two or more operations of any kind being,—

(a) operations which affect the same property, or one of which affects some property and the other or others of which affect property which represents, whether directly or indirectly, that property, or income arising from that property, or any property representing accumulations of any such income; or

(b) any two operations of which one is effected with reference to the other, or with a view to enabling it to be effected or to facilitating its being effected, and any third operation having a like relation to either of those two, and any fourth operation having a like relation to any of those three, and so on;

whether those operations are effected by the same person or by different persons, whether they are connected otherwise than as aforesaid or not, and whether they are contemporaneous or any of them precedes or follows any other;

[⁷⁸ “Average rate” means, in relation to a company, a rate per cent. per annum, the percentage being ascertained by—

(a) computing the aggregate amount of the net income of the company for the relevant accounting years (a deduction being made, where the company sustained a loss in any of those years, of the amount of the loss);

(b) dividing that amount by the number of those years; and

(c) comparing the result with the principal value of the assets of the company passing on the death of the deceased by virtue of section forty-six of this Act after making the allowances to be made under section fifty of this Act];

“Company” includes any body corporate, wheresoever incorporated;

“Debenture” means, in relation to a company, any obligation of the company in respect of any loan capital issued by the company otherwise than as consideration for a loan made to it in the ordinary course of a banking business, or in respect of any debt incurred by the company—

(a) for any money borrowed by the company,

⁷⁸ Paragraph in square brackets substituted as to deaths on or after July 13, 1944, by F. A., 1944, s. 36, for original paragraph, which read as follows:—

“‘Average rate’ means, in relation to a company, the rate per annum which, when expressed as a percentage in pounds, equals the average of the proportions respectively ascertained by comparing the net income of the company for each of the relevant accounting years with the principal value of the assets of the company passing on the death of the deceased by virtue of section forty-six of this Act after making the allowances to be made under section fifty of this Act.”

otherwise than by way of temporary loan made in the ordinary course of a banking business;

(b) for any transfer of capital assets made to the company by any person, unless the obligation is one resulting from a dealing with a person who transferred such assets to the company in, and on terms consistent with, the ordinary course of a business carried on by him;

(c) without consideration, or for consideration the value of which to the company at the time when the debt was incurred was substantially less than the value at that time of the debt (including any premium thereon); or

(d) where the debt was of such a nature that it would, in the ordinary course of business and apart from some special arrangement, have carried interest, if the debt did not carry interest or carried interest at a rate which was either unreasonably high or unreasonably low;

“Disposition” includes any trust, covenant, agreement or arrangement, whether made by a single operation or by associated operations, and also, in relation to shares in or debentures of a company, the extinguishment or any alteration of rights attaching thereto, whether effected by a single operation or by associated operations;

“Distributed assets” means, in relation to a company, assets of the company to which subsection (3) of section forty-six of this Act applies which were disposed of or distributed by the company as mentioned in that subsection, and “value of the distribution” means, in relation to any distributed assets, the value thereof or, if partial consideration (other than the extinguishment, or an alteration, of rights attaching to shares in or debentures of a company to which that section applies) was given for the distribution in money or money’s worth received by the company for its own use and benefit, the value thereof less the value of the consideration given;

“Dividend” includes a bonus which would be treated as income for the purposes of the Income Tax Acts;

“Member” means, in relation to a company, a holder in his own right of any share in or debenture of the company, and a person interested in any share in or debenture of the company held, whether by himself or another, otherwise than in the holder’s own right;

“Officer” means, in relation to a company, any person who exercises the functions of a director, manager, secretary or liquidator of the company;

“Payment” includes a transfer of property and a set-off or release of an obligation, and references to the amount of a payment include, in relation to property transferred or to an obligation set-off or released, references to the value thereof;

“Periodical payment” has the meaning assigned to it by subsection (2) of section forty-seven of the Act;

“Power” includes any right or power exercisable by virtue of the holding of shares in or debentures of a company, and any right or power to procure an issue of shares in or debentures of a company; and

“Tort” in relation to Scotland means delict or quasi delict.

60.—(1) The power of the Treasury under section twenty-two of the Finance (No. 2) Act, 1931, to issue securities with the condition as to exemption from taxation specified in that section shall extend to the issuing of securities with that condition so modified, whether as to the extent of the exemption or the cases in which the exemption is to operate, as the Treasury may specify in the terms of the issue.

* * * * *

64.—(1) Subsection (1) of section thirty-eight of the Finance Act, 1924, (which relates to relief in respect of death duties payable on the deaths of members of His Majesty's Forces who die from wounds inflicted while on active service or from any of the other causes therein mentioned) shall have effect in relation to masters and members of the crews of ships and fishing boats, and pilots, dying (whether before or after the commencement of this Act) from causes arising during the period of the present emergency out of the operations of war, as it has effect in relation to members of His Majesty's Forces dying from such wounds or other causes as are therein mentioned, with this qualification, that the Treasury shall act on the recommendation of the Minister of Shipping instead of that of the Secretary of State or the Admiralty.

(2) In the case of deaths from such causes as are mentioned in the said section thirty-eight arising during the period of the present emergency of persons to whom that section applies, and of deaths from such causes as are mentioned in the preceding subsection arising during that period of persons to whom that subsection applies, where the Commissioners of Inland Revenue are satisfied that estate duty has become chargeable on any property passing on such a death and that subsequently estate duty has again become chargeable on the same property or any part thereof on another such death, being the death of a person to whom that property or that part thereof passed on the earlier death, the whole of the death duties payable on the later death on that property or that part thereof shall be remitted or, if

paid, shall be repaid, and that property or that part thereof shall not be aggregated with any other property passing on the later death for the purpose of determining the rate of estate duty.

(3) In this section the expression "pilot" has the meaning assigned to it by section seven hundred and forty-two of the Merchant Shipping Act, 1894, and "the period of the present emergency" means the period beginning on the third day of September, nineteen hundred and thirty-nine and ending on such date as may be declared by His Majesty under the Courts (Emergency Powers) Act, 1939,^{78a} to be the date on which the emergency that was the occasion of the passing of that Act came to an end.

65.—(1) This Act may be cited as the Finance Act, 1940.

* * * * *

(5) Part IV of this Act shall be construed as one with Part I of the Finance Act, 1894.

(6) Any reference in this Act to any other enactment shall, unless the contrary is expressly provided or the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(7) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

(8) The enactments set out in the Eighth Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

SCHEDULES

Sections 46 & 47

SEVENTH SCHEDULE

PROVISIONS SUPPLEMENTARY TO SECTION FORTY-SIX AND SUCCEEDING PROVISIONS OF PART IV

Amounts to be taken into account in respect of benefits, and time when benefits are to be treated as accruing

1.—(1) The provisions of this paragraph shall have effect for the purpose of determining the amounts to be taken into account, for the purposes of subsection (2) of section forty-six of this Act, as the amounts of benefits accruing to the deceased from the company.

(2) No amount shall be taken into account more than once.

(3) Where an amount is taken into account by reference to the deceased's having been entitled to a benefit which he did not in fact receive, or by reference to a power which was not in fact exercised or was surrendered, due regard shall be had to the effect that his receiving the benefit, or the power's being exercised, would have had in relation to other benefits.

^{78a} The present emergency ended on October 8, 1950 [Courts (Emergency Powers) (End of Emergency) Order, 1950].

(4) The amounts that are to be taken into account by reference to the deceased's having been entitled to a benefit which he did not in fact receive, or by reference to a power which was not in fact exercised or was surrendered, shall be such as would have fallen to be taken into account as benefits received by the deceased if he had acted in relation to the claiming of benefits and the exercise of powers during the five years⁷⁹ ending with his death to his greatest financial advantage, due regard being had to any consideration which he would have had to give in respect of a claim to any benefit or the exercise of any power.

(5) In making for the purposes of the last preceding sub-paragraph a computation of any diminution of income which the deceased would have sustained by giving any such consideration as is therein mentioned, or of any increase of income which the company would have obtained from any such consideration to be given to the company, it shall be assumed that the consideration would have yielded income equal to interest at the average rate on the amount or value thereof.

(6) The amounts to be taken into account shall include any income tax which the deceased paid or bore in respect of the benefits in question.

(7) The amount to be taken into account in respect of a benefit consisting of any enjoyment in specie of land or other property of the company or of a right thereover shall be the value of the enjoyment thereof for the period during which the benefit subsisted, and that value shall be calculated in the case of land by reference to the annual value of the land as ascertained for the purposes of income tax chargeable under Schedule A.

2.—(1) The provisions of this paragraph shall have effect for the purpose of determining—

(a) whether a benefit accruing to the deceased from the company is to be treated as having accrued to him during the five years⁷⁹ ending with his death, or during a particular accounting year, or at any other relevant time; and

(b) the period during which a benefit consisting of any enjoyment in specie of land or other property of the company or of a right thereover is to be treated as having subsisted.

(2) A benefit consisting of income of the company or a periodical payment which the deceased received, or became entitled to (but did not in fact) receive, shall be treated as having accrued to him at the earliest time at which he could have obtained receipt thereof.

(3) A benefit consisting of income of the company or a periodical payment which the deceased could have become entitled to receive by an exercise in the five years⁷⁹ ending with his death of a power which was not in fact exercised or was surrendered shall be treated as having accrued to him at the earliest time at which he could have obtained receipt thereof if he had acted as mentioned in sub-paragraph (4) of paragraph 1 of this Schedule.

(4) A benefit consisting of interest on such a payment other than a periodical payment as is mentioned in subsection (1) of section forty-seven of this Act which the deceased could have become entitled to receive shall be treated as having accrued to him in any accounting year to the

⁷⁹ "Five" substituted for "three" by F. A., 1946, Eleventh Schedule, as to deaths on or after April 10, 1946.

extent to which the period during which the interest is to be treated as accruing fell within that year.

(5) A benefit consisting of any such enjoyment in specie as aforesaid shall be treated as having accrued to the deceased in the said five years⁸⁰ if any part of the period during which it subsisted fell within those years, and shall be treated as having accrued to him in any accounting year to the extent to which the period during which it subsisted fell within that year.

(6) A benefit consisting of any such enjoyment in specie as aforesaid shall be treated as having subsisted during the following period, that is to say—

- (a) in the case of enjoyment that the deceased had, during the period for which he had it;
- (b) in the case of enjoyment which he became entitled to (but did not in fact) have, during the period for which he could have had it;
- (c) in the case of enjoyment which he could have become entitled to have by an exercise in the five years⁸⁰ ending with his death of a power which was not in fact exercised or was surrendered, during the period for which he could have had it if he had acted as mentioned in sub-paragraph (4) of paragraph 1 of this Schedule.

Adjustments as to Distributed Assets and Additions to Assets

3.—(1) Where the assets of the company passing on the death of the deceased by virtue of section forty-six of this Act include any distributed assets, or by reason of the company's having been wound up or dissolved before the death consist of distributed assets, the following provisions of this paragraph shall have effect.

(2) The net income of the company shall be determined as if the income of the company had included, or the company had had income equal to, interest on a sum equal to the value of each distribution at the average rate from the date thereof.

(3) If on any distribution the deceased received beneficially an interest in any of the distributed assets, the benefits accruing to the deceased from the company shall be ascertained as if the amount brought into the income of the company under the last preceding sub-paragraph by reference to the value of the distribution of those assets had been income of the company which the deceased was entitled to receive immediately on its accrual to the company, or, where the interest in those assets which the deceased received was less than an absolute interest, had been such income to an extent corresponding to the proportion which the value of the interest in those assets received by him bore to the value of those assets.

(4) Where sub-paragraph (3) of this paragraph has effect—

- (a) the value on which, apart from this provision, estate duty would be payable on the death of the deceased by virtue of section forty-six of this Act shall be reduced by an amount equal to

⁸⁰ "Five" substituted for "three" by F. A., 1946, Eleventh Schedule, as to deaths on or after April 10, 1946.

the value of the distribution of the assets in question, or, where the interest in those assets which the deceased received was less than an absolute interest, by an amount equal to the proportion aforesaid of that value; and

- (b) any amount which is treated as a benefit accruing to the deceased from the company by virtue of that sub-paragraph shall be treated for the purposes of subsection (1) of section fifty-one of this Act as a benefit received by him.

4.—(1) Where the principal value of the assets of the company passing on the death of the deceased by virtue of section forty-six of this Act is increased by reason of an addition's having been made to the assets of the company, otherwise than by way of receipts representing income in respect of which the company was liable to pay or bear income tax, between the beginning of the first of the relevant accounting years and the death of the deceased, either—

- (a) in consideration of an issue of shares in or debentures of the company, or
 - (b) otherwise howsoever, except by way of purchase for full consideration in money or money's worth given by the company,
- the following provisions of this paragraph shall have effect in relation to the added assets.

(2) The net income of the company shall be determined as if the income of the company had included interest on a sum equal to the value of the addition at the average rate from the beginning of the first of the relevant accounting years to the date of the addition.

(3) If a transfer of any of the added assets or of any interest in any of them was made to the company by the deceased, the benefits accruing to the deceased from the company shall be ascertained as if the amount brought into the income of the company under the last preceding sub-paragraph by reference to the value of the addition of those assets had been income of the company which the deceased was entitled to receive immediately on its accrual to the company, or had been such income to an extent corresponding to the proportion which the value of the interest transferred bore to the value of those assets, as the case may be.

(4) Where sub-paragraph (3) of this paragraph has effect, if the deceased received as consideration for the addition of the assets in question an interest in any shares in or debentures of the company in respect of which estate duty would be payable on his death apart from anything in subsection (2) of section fifty-one of this Act, any amount which is treated as a benefit accruing to him from the company by virtue of that sub-paragraph shall be treated for the purposes of the said subsection (2) as a benefit accruing to him by virtue of his interest in those shares or debentures.

(5) In this paragraph the expression "value of the addition" means, in relation to any added assets, the value thereof or, if partial consideration (other than an issue of, or an alteration of rights attaching to, shares in

or debentures of the company) was given therefor in money or money's worth out of the resources or at the expense of the company, the value thereof less the value of the consideration given.

*Prevention of duplication of charge in respect of benefits and charge
in respect of shares*

5. For the purposes of subsection (2) of section fifty-one of this Act, where the benefits that accrued to the deceased from the company in the relevant accounting years included benefits that accrued to him otherwise than as mentioned in that subsection, but the deceased had at any time an interest in, or a power was at any time exercisable in relation to, shares in or debentures of the company in respect of which estate duty would be payable on his death apart from anything in that subsection, and by virtue of that interest or power benefits accrued to the deceased from the company in those years, or would so have accrued to him if any payments had been made by virtue of rights attached to those shares or debentures, then—

- (a) if the first-mentioned benefits consisted to any extent of payments made out of moneys which, if not so applied, could have been applied in increasing the last-mentioned benefits, or as payments which would have constituted such benefits; or
- (b) if the first-mentioned benefits are brought into the computation made under subsection (2) of section forty-six of this Act to the exclusion to any extent of the last-mentioned benefits;

the first-mentioned benefits shall to that extent be treated as if they had accrued to the deceased by virtue of his interest in, or of the power exercisable in relation to, the said shares or debentures.

"Accounting year"

6.—(1) The expression "accounting year" means if the company has, before the death of the deceased, made up accounts for a period of twelve months ending in the last year of his life, that period and each previous period of twelve months ending on the date corresponding to that to which the accounts were made up, or, if not, a period of twelve months ending on such date in the last year of his life as the Commissioners may determine and each previous period of twelve months ending on the date corresponding to the date determined.

(2) The expression "relevant accounting years" means the accounting years by reference to which the extent of the passing of the assets of the company is to be determined under section forty-six of this Act.

(3) Where an accounting year does not coincide with a period for which accounts of the company were made up, the Commissioners may, for the purpose of determining the income or net income of the company for that accounting year, divide any such period and make such apportionments and aggregations of the income of the company as may be necessary, so, however that any apportionments so made shall be made in proportion to the number of months or fractions of months in the respective periods for which the apportionment is made.

Section 65

EIGHTH SCHEDULE

ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
63 & 64 Vict. c. 7	The Finance Act, 1900.	Section eleven (except as regards persons dying before the commencement of this Act).
10 Edw. 7 & 1 Geo. 5, c. 8.	The Finance (1909-10) Act, 1910.	In section fifty-nine, in subsection (1), the words "or a surrender, assurance, divesting, or disposition must have been made or effected", the words "or affected by the surrender, assurance, divesting, or disposition", the words "and section eleven of the Finance Act, 1900", and in the proviso the words "surrender, assurance, divesting or disposition" and the words "or effected" (except as regards persons dying before the commencement of this Act).
20 & 21 Geo. 5, c. 28.	The Finance Act, 1930.	Sections thirty-four to thirty-nine (except as regards persons dying before the commencement of this Act).
1 & 2 Geo. 6, c. 46	The Finance Act, 1938.	Section forty-nine (except as regards persons dying before the commencement of this Act).

The Finance (No. 2) Act, 1940

(3 & 4 GEO. 6, c. 48)

[22nd August 1940.]

PART IV

ESTATE DUTY

16. In the case of persons dying after the twenty-third day of July, nineteen hundred and forty, the scale set out in the Sixth Schedule to this Act shall be substituted for the scale set out in the Second Schedule to the Finance Act, 1930, as the scale of rates of estate duty, and section twenty-three of the Finance (No. 2) Act, 1939, shall not apply.

17.—(1) Subject to the provisions of subsection (2) of this section, where an interest in expectancy in any property has,

whether before or after the passing of this Act, been bona fide sold or mortgaged for full consideration in money or money's worth, and the rates of estate duty in force in the case of a person dying when the interest falls into possession are higher than the rates in force in the case of a person dying at the time of the sale or mortgage, then—

- (a) no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if the rates of estate duty applicable had been the rates in force in the case of a person dying at the time of the sale or mortgage; and
 - (b) in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgage.
- (2) Subsection (1) of section fifty-six of the Finance Act, 1940 (which restricts the operation of the provisions of section three of the Finance Act, 1894, relating to transactions for full consideration, in the case of such transactions with companies to which the said section fifty-six applies) shall apply for the purposes of the foregoing subsection as it applies for the purposes of the said section three.

(3) This section shall apply in the case of interests in expectancy falling into possession after the twenty-third day of July, nineteen hundred and forty.

* * * * *

PART VI

GENERAL

42.—(1) This Act may be cited as the Finance (No. 2) Act, 1940.

* * * * *

(5) Part IV of this Act shall be construed as one with Part I of the Finance Act, 1894.

(6) Any reference in this Act to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(7) Such of the provisions of this Act as relate to entertainments duty and estate duty shall not extend to Northern Ireland.

(8) The enactments set out in the Tenth Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule :

* * * * *

Section 16

SIXTH SCHEDULE

SCALE OF RATES OF ESTATE DUTY ⁸¹

Principal Value of Estate		Rate per cent. of Duty	<i>Value below which the duty is reduced by s. 13 (1) of the Finance Act, 1914</i> ⁸²	
£	£		£	s. d.
Exceeding 100 and not exceeding 500		1	101	0 3
„ 500 „ „ 1,000		2	505	2 1
„ 1,000 „ „ 5,000		3	1,010	6 3
„ 5,000 „ „ 10,000		4	5,052	1 8
„ 10,000 „ „ 12,500		6	10,212	15 4
„ 12,500 „ „ 15,000		7.2	12,661	12 9
„ 15,000 „ „ 18,000		8.4	15,196	10 2
„ 18,000 „ „ 21,000		9.6	18,238	18 10
„ 21,000 „ „ 25,000		10.8	21,282	10 3
„ 25,000 „ „ 30,000		12	25,340	18 3
„ 30,000 „ „ 35,000		13.2	30,414	15 0
„ 35,000 „ „ 40,000		14.4	35,490	13 2
„ 40,000 „ „ 45,000		15.6	40,568	14 5
„ 45,000 „ „ 50,000		16.8	45,649	0 10
„ 50,000 „ „ 55,000		19.5	51,677	0 5
„ 55,000 „ „ 65,000		20.8	55,902	15 7
„ 65,000 „ „ 75,000		22.1	66,084	14 6
„ 75,000 „ „ 85,000		23.4	76,272	17 0
„ 85,000 „ „ 100,000		24.7	86,467	9 4
„ 100,000 „ „ 120,000		26	101,756	15 2
„ 120,000 „ „ 150,000		28.6	124,369	15 0
„ 150,000 „ „ 200,000		31.2	155,668	12 2
„ 200,000 „ „ 250,000		33.8	207,854	19 9
„ 250,000 „ „ 300,000		36.4	260,220	2 7
„ 300,000 „ „ 400,000		39.	312,786	17 9
„ 400,000 „ „ 500,000		41.6	417,808	4 5
„ 500,000 „ „ 600,000		44.2	523,297	9 10
„ 600,000 „ „ 800,000		46.8	629,323	6 2
„ 800,000 „ „ 1,000,000		49.4	841,106	14 5
„ 1,000,000 „ „ 1,250,000		52.	1,054,166	13 4
„ 1,250,000 „ „ 1,500,000		54.6	1,321,585	18 1
„ 1,500,000 „ „ 2,000,000		58.5	1,640,963	17 2
„ 2,000,000		65	2,371,428	11 6

⁸¹ Replaced as to deaths on or after April 10, 1946, by F. A., 1946, Tenth Schedule.

⁸² This column does not form part of the statute.

TENTH SCHEDULE

ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
10 Edw. 7 & 1 Geo. 5, c. 8.	The Finance (1909-10) Act, 1910.	Section sixty-four, in so far as it relates to section fifty-four.
4 & 5 Geo. 5, c. 10	The Finance Act, 1914.	Section sixteen, in so far as it relates to section twelve.
9 & 10 Geo. 5, c. 32.	The Finance Act, 1919.	The proviso to section twenty-nine.
15 & 16 Geo. 5, c. 36.	The Finance Act, 1925.	The proviso to section twenty-two.
20 & 21 Geo. 5, c. 28.	The Finance Act, 1930.	The proviso to section thirty-three.
* * *	* * *	* * *
2 & 3 Geo. 6, c. 41	The Finance Act, 1939.	The proviso to section twenty-nine.
2 & 3 Geo. 6, c. 109	The Finance (No. 2) Act, 1939.	The proviso to section twenty-three.

The Finance Act, 1941

(4 & 5 GEO. 6, c. 30)

[22nd July, 1941.]

PART II

INCOME TAX

* * * * *

7.—(4) Any assignment of or charge on any amount to be credited under this section, and any agreement for any such assignment or charge, shall be void, and any such amount shall be exempt from death duties payable on any death occurring before the date fixed by the Treasury under subsection (1) of this section³³; but any claim to any such amount shall, subject as aforesaid, be transmissible as if it were a debt due from the Crown, and references in the foregoing provisions of this section to an individual, a man or his wife shall, except where the context otherwise requires, be deemed to include references to persons claiming through or under them respectively :

³³ Which provided for the establishment of Post War Credits in respect of Income Tax. The F. A., 1946, s. 26, made provision for the fixing of this date in the case of certain elderly people and authorised repayment of Post War Credits for the years, 1941-42, 1942-43 and 1943-44. Repayment in these cases was extended to the years 1944-45 and 1945-46 by the F. A., 1947.

Provided that nothing in this subsection shall affect any assignment or charge made by the personal representatives of any person acting in their capacity as such, or any agreement for any such assignment or charge.

* * * * *

PART IV

MISCELLANEOUS AND GENERAL

45.—(1) Property which, at any time during the period of the present emergency, is given absolutely before the death of the donor for the use of His Majesty, shall be exempt from estate duty on the death of the donor.

(2) In this section, the expression “the period of the present emergency” means the period beginning on the third day of September, nineteen hundred and thirty-nine, and ending on such date as may be declared by His Majesty under the Courts (Emergency Powers) Act, 1939,⁸⁴ to be the date on which the emergency that was the occasion of the passing of that Act came to an end.

(3) This section shall have effect and be deemed always to have had effect in relation to all deaths, whether occurring before or after the passing of this Act.

46.—(1) If, in the case of any death, it is proved to the satisfaction of the Commissioners of Inland Revenue that it is a death to which this section applies, they shall give the same relief from death duties as, under section thirty-eight of the Finance Act, 1924 (which relates to certain deaths of members of His Majesty’s forces) is to be given in the cases to which that section applies; and the deaths to which this section applies shall be deemed, for the purposes of subsection (2) of section sixty-four of the Finance Act, 1940 (which provides for the remission in certain cases of death duties on property passing on successive deaths), to be included among the deaths to which that subsection applies, and that subsection shall have effect accordingly :

Provided that the relief to be given under this subsection in the case of a married woman whose husband survives her shall be calculated as if, in the enactments referred to in section thirty-eight of the Finance Act, 1924, any reference to a widow included a reference to a surviving husband.

(2) This section applies to the death of any person from injuries received by him, whether before or after the passing of this Act, but during the period of the present emergency and

⁸⁴ Repealed and re-enacted by the Courts (Emergency Powers) Act, 1943. The present emergency ended on October 8, 1950 [Courts (Emergency Powers) (End of Emergency) Order, 1950].

within twelve months of his death, being injuries caused by the operations of war :

Provided that this section does not apply to deaths from such causes as are mentioned in section thirty-eight of the Finance Act, 1924, of persons to whom that section applies, or to deaths from such causes as are mentioned in subsection (1) of section sixty-four of the Finance Act, 1940, of persons to whom that subsection applies.

(3) In this section the expression "the period of the present emergency" means the period beginning on the third day of September, nineteen hundred and thirty-nine and ending on such date as may be declared by His Majesty under the Courts (Emergency Powers) Act, 1939,⁸⁴ to be the date on which the emergency that was the occasion of that Act came to an end.

* * * * *

52.—(1) This Act may be cited as the Finance Act, 1941.

* * * * *

(5) Any reference in this Act to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(6) Such of the provisions of this Act as relate to death duties shall not extend to Northern Ireland.

The Finance Act, 1943

(6. & 7 GEO. 6, c. 28)

[22nd July 1943.]

PART IV

MISCELLANEOUS

26.—(1) Sections thirty and thirty-one of the Finance Act, 1939 (which provide respectively—

(a) for the charging of Estate duty on annuities or other interests purchased or provided by persons having property derived from the deceased; and

(b) for disallowing, for Estate duty purposes, debts to persons having property derived from the deceased and charging duty on repayments of such debts),

shall, in the case of a person dying after the twelfth day of April, nineteen hundred and forty-three, have effect subject to the provisions of this section.

(2) In those sections, the expression "property derived from the deceased" shall include any property which was the subject matter of a disposition, made by the deceased, either by himself

alone or in concert or by arrangement with any other person, notwithstanding that the disposition was made for full consideration in money or money's worth paid to the deceased for his own use or benefit, or which represented any of the subject matter of such a disposition, whether directly or indirectly, and whether by virtue of one or more intermediate dispositions, and whether any such intermediate disposition was or was not for full or partial consideration :

Provided that where the first-mentioned disposition was for full consideration in money or money's worth paid to the deceased for his own use or benefit and it is proved to the satisfaction of the Commissioners of Inland Revenue that the disposition was not part of associated operations which included—

(a) a disposition by the deceased, either by himself alone or in concert or by arrangement with any other person, otherwise than for full consideration in money or money's worth paid to the deceased for his own use or benefit; or

(b) a disposition by any other person operating to reduce the value of the property of the deceased,

then, in considering whether estate duty should be charged under those sections, the said first-mentioned disposition shall be left out of account as if this section did not apply in relation to it.

(3) In this section the expressions "disposition" and "subject matter" have the meanings assigned to them by subsection (3) of the said section thirty, and the expression "associated operations" has the meaning assigned to it by section fifty-nine of the Finance Act, 1940.

27.—(1) Section eighteen of the Finance Act, 1896 (which determines the rate of interest on death duties) shall, as respects interest accruing due on or after the thirteenth day of April, nineteen hundred and forty-three, have effect with the substitution for the reference therein to three per cent. of a reference to two per cent.

(2) As respects interest accruing due on or after the said date, two per cent. shall be substituted for three per cent. as the rate of interest charged—

(a) by subsection (3) of section seventeen of the Law of Property Act, 1925, as amended by subsection (2) of section forty-three of the Finance Act, 1938, on death duties payable and remaining unpaid in respect of land which, by virtue of the said subsection (3), become immediately payable on a conveyance of the land which over-reaches the charge for the duties; and

(b) by subsection (6) of section seventy-three of the Land Registration Act, 1925, as so amended, on death duties payable and remaining unpaid in respect of a registered

estate which, by virtue of the said subsection (6), become immediately payable on a disposition of the estate which overrides the charge for the duties.

* * * * *

31.—(1) This Act may be cited as the Finance Act, 1943.

* * * * *

(5) Any reference in this Act to any other enactment shall, except in so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(6) This Act shall not extend to Northern Ireland in so far as it relates to duties with respect to which the Parliament of Northern Ireland has power to make laws.

* * * * *

The Finance Act, 1944

(7 & 8 GEO. 6, c. 28)

[18th July 1944.]

PART VI

ESTATE DUTY

Basis of charge in respect of deceased's benefits from certain companies

35. . . .⁸⁵

36. In section fifty-nine of the Finance Act, 1940, for the definition of "Average rate" there shall be substituted the following definition—

⁸⁵ This section repealed as to deaths on or after April 10, 1946, by F. A., 1946, s. 67 (11). The repealed section was as follows:—

"35. In section forty-six of the Finance Act, 1940 (which provides that, where the deceased has made to a company to which that section applies a transfer of any property and any benefits accruing to him from the company accrued to him in the three years ending with his death, the assets of the company shall be deemed for the purposes of estate duty to be included to a certain extent in the property passing on his death), for subsection (2) there shall be substituted the following subsection:—

'(2) The extent to which the assets of the company are to be deemed to be included as aforesaid shall be the proportion ascertained by comparing the aggregate amount of the benefits accruing to the deceased from the company in the last three accounting years with the aggregate amount of the net income of the company for the said years:

Provided that—

(a) where, in any of the said accounting years, the company sustained a loss, the amount of that loss shall be deducted in ascertaining the said aggregate net income of the company;

(b) where the company came into existence in the last but one, or in the last, of the said accounting years, the references in this subsection to the said accounting years shall be construed as references to the last two, or, as the case may be, the last, of those years'."

“ ‘Average rate’ means, in relation to a company, a rate per cent. per annum, the percentage being ascertained by—

- (a) computing the aggregate amount of the net income of the company for the relevant accounting years (a deduction being made, where the company sustained a loss in any of those years, of the amount of the loss);
- (b) dividing that amount by the number of those years; and
- (c) comparing the result with the principal value of the assets of the company passing on the death of the deceased by virtue of section forty-six of this Act after making the allowances to be made under section fifty of this Act.”

37. Section forty-nine of the Finance Act, 1940, shall, with the necessary adaptations, apply to the determination, for the purposes of Part IV of that Act, of any loss sustained by a company as it applies to the determination for the purposes thereof of the net income of a company.

Amendment as to avoidance of duplication of charge where deceased has received benefits from a company

38. For subsection (2) of section fifty-one of the Finance Act, 1940 (which contains provisions for preventing the duplication of charge of estate duty in certain cases) there shall be substituted the following subsections—

“ (2) Where the following conditions are satisfied, that is to say, that any benefits accrued to the deceased from the company by virtue of any interest that he at any time had in shares in or debentures of the company, or by virtue of a power’s having at any time been exercisable by him or with his consent in relation to shares in or debentures of the company, and apart from this subsection estate duty would be payable on the death both on the value of those shares or debentures by virtue of any of the enactments relating to that duty other than section forty-six of this Act and on the proportion of the value of the company’s assets that corresponds to the benefits that so accrued to him by virtue of that section, then—

- (a) if the value of the shares or debentures is equal to, or greater than, the said proportion, or if the Commissioners are satisfied that the said proportion would not, if fully ascertained, be found to be substantially in excess of the value of the shares or debentures, duty on the said proportion shall not be payable;

- (b) in any other case, the amount on which duty is to be charged in respect of the said proportion shall be reduced by the amount of the value of the shares or debentures.

(2A) Where the conditions set out in the last preceding subsection would be satisfied but for the fact that, by reason of an exemption from estate duty (not being an exemption on the ground that the deceased or other person having an interest in the shares or debentures ceasing on the death of the deceased had only an interest as the holder of an office), that duty is not payable on the value of the shares or debentures, paragraphs (a) and (b) of that subsection shall apply as if that exemption did not operate and as if the duty had been payable on the value of the shares and debentures accordingly :

Provided that where—

- (a) the exemption in question depends on a payment of any duty on an earlier death, or does not depend on such a payment but depends wholly or partly on any dispositions having been made; and
- (b) since the date of that death or disposition, as the case may be, the shares or debentures have been substantially increased in value by reason of a transfer of property to any company by any person or by reason of the extinguishment of, or any alteration of the rights attaching to, shares in or debentures of any company,

then, unless the exemption takes the form of a deduction from the value of the shares or debentures of a fixed amount which is independent of the value of the shares or debentures, the references in paragraphs (a) and (b) of the last preceding subsection to the value of the shares or debentures therein mentioned shall have effect as if they were references to the value thereof reduced to the extent to which, in the opinion of the Commissioners, that value is attributable to that transfer, extinguishment or alteration.

(2B) Where, by reason of an exemption from estate duty, that duty is payable on part only of the value of the shares or debentures, subsection (2) of this section shall, with the necessary adaptations, be applied to the part of the value of the shares or debentures on which duty is payable and subsection (2A) of this section shall be applied to the part of the value of the shares or debentures affected by the exemption; and, where there are two or more exemptions from estate duty each of which operates on part only of the value of the shares or debentures and the exemptions are such that the said subsection (2A) would operate differently in relation to them, then, whether or not there is any part

of the value of the shares or debentures on which estate duty is payable, the said subsection (2A) shall, with the necessary adaptations, be applied separately in relation to the parts of the value of the shares or debentures affected by each exemption.

(2c) In this section the expression 'exemption from estate duty' includes any exemption conferred by any provision of the enactments relating to estate duty which has the effect of exempting property, in whole or in part, from the duty, whether that provision takes the form that the property is not to be deemed to pass, or the form that the duty is not to be payable, or the form that a deduction is to be made from the value of the property, or any other form; and the reference in paragraph (b) of the proviso to subsection (2A) of this section to an increase in the value of shares or debentures includes, where those shares or debentures have been acquired in substitution for any other property, any increase in the value of any property which those shares or debentures directly or indirectly represent."

Computation of net income of company

39. In determining under section forty-nine of the Finance Act, 1940, the net income of a company for any accounting year, no deduction from the income of the company shall be made in respect of—

- (a) the amount of any liability, deduction or set-off for which allowance has already been made in computing the amount of the income of the company; or
- (b) the amount of any loss sustained before the beginning of that year, or of any payment which, under section nineteen of the Finance Act, 1928, would be treated as a loss sustained before the beginning of that year; or
- (c) the amount of any deduction representing the diminished value by reason of wear and tear during any previous year of any machinery or plant.

*Relaxation of provisions as to purchases
of annuities from relatives*

40.—(1) Subject to the provisions of this section, the relief specified therein shall be granted where, on the death of a person who has made a disposition of property in favour of a relative of his or a company (hereafter in this section referred to as "the disposition"), any estate duty becomes, or would but for this section become, payable by virtue of [subsection (1A)⁸⁶ of] section forty-four of the Finance Act, 1940 (which relates to purchases of annuities or other interests from relatives).

⁸⁶ Words in square brackets inserted by F. A., 1950, s. 46 (2) (a).

(2) The sum on which estate duty would be payable apart from this section on the death in respect of the property which was the subject matter of the disposition or in respect of the property liable to a debt or incumbrance created by the deceased which was the subject matter of the disposition, as the case may be, shall first be computed and, subject to the limitations provided for by subsection (3) of this section, there shall then be allowed as a deduction from that sum—

- (a) the amount, if any, by which the aggregate of the payments which have been made on account of the annuity or other interest for the period from the date when the annuity or other interest began to accrue in favour of the deceased until his death, exceeds the aggregate of the income derived from the deceased by virtue of the disposition for the period from the date of the disposition until his death; and
- (b) simple interest on so much, if any, of the amount aforesaid, and for such period, as, in the opinion of the Commissioners, is in all the circumstances just, at the rates from time to time payable during that period on death duties in arrear.

In this subsection, the expression “the aggregate of the income derived from the deceased by virtue of the disposition” means—

- (i) in relation to so much of the property which was the subject matter of the disposition as did not consist of a debt or incumbrance created by the deceased, such amount as, in the opinion of the Commissioners, is in all the circumstances equal to a reasonable return from the property; and
 - (ii) in relation to so much of the property which was the subject matter of the disposition as did consist of a debt or incumbrance created by the deceased, the aggregate amount of the interest paid or payable by the deceased in respect of that debt or incumbrance.
- (3) The amount to be allowed as a deduction under subsection (2) of this section shall, in the circumstances specified in the provisions of the Third Schedule to this Act, be limited to the extent specified in those provisions respectively.

In the said Schedule, the expression “the disposition” has the same meaning as in this section, the expression “the annuity payments” means the payments specified in paragraph (a) of subsection (2) of this section, and the expression “the amount allowed” means the amount to be allowed as a deduction under this section.

(4) In this section, the expressions “relative” and “annuity” have the meanings assigned to them by section

forty-four of the Finance Act, 1940, and sections fifty-eight and fifty-nine of that Act shall apply for the interpretation of this section and the said Third Schedule as they apply for the interpretation of Part IV of that Act.

Application of Part VI

41. The last preceding section shall have effect in the case of all persons dying after the twenty-seventh day of June, nineteen hundred and forty, but save as aforesaid the provisions of this Part of this Act shall have effect in the case only of persons dying after the passing of this Act.

PART VII

MISCELLANEOUS

42. The provisions of the Fourth Schedule to this Act shall have effect in relation to income tax and death duties where persons, income or property are or is affected by the law relating to trading with the enemy.

* * * * *

49.—(1) This Act may be cited as the Finance Act, 1944.

* * * * *

(6) Part VI of this Act shall be construed as one with Part I of the Finance Act, 1894.

(7) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(8) The provisions of the Fourth Schedule to this Act shall, if provision in that behalf is made by an Act of the Parliament of Northern Ireland, apply with any necessary modifications to death duties payable in Northern Ireland as they apply to death duties payable in Great Britain, but save as aforesaid such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * *

THIRD SCHEDULE

LIMITATIONS ON RELIEF FROM ESTATE DUTY CHARGEABLE UNDER FINANCE Act, 1940, s. 44

1.—(1) The provisions of subsection (1) of section thirty-one of the Finance Act, 1939 (which provides, amongst other things, for the disallowance of debts the consideration for which was property derived

from the deceased) shall, in the manner specified in this paragraph, have effect in relation to the computation of the amount allowed.

(2) Where, if—

- (a) the annuity payments had formed the consideration for a debt created by the deceased equal to the total amount of those payments; and
- (b) subsection (1) of section seven of the Finance Act, 1894 (which provides for an allowance for debts in computing the amount on which estate duty is payable), were applied to that debt, the full amount of that debt would not, having regard to the operation of subsection (1) of the said section thirty-one, have been allowable under subsection (1) of the said section seven, the annuity payments shall, for the purpose of ascertaining the amount allowed, be reduced so as not to exceed the amount, if any, which would have been allowable in the circumstances aforesaid under subsection (1) of the said section seven:

Provided that, in applying the said section thirty-one for the purposes of this paragraph, property which is the subject matter of the disposition shall not be treated as property derived from the deceased.

2. [Where under section forty-four of the Finance Act, 1940, a deduction for partial consideration would have been allowable in respect of the annuity or other interest if subsection (1A) of that section had not applied to the disposition and if any other consideration for the disposition had not been given, the amount allowed shall not exceed the amount of that deduction⁸⁷].

3. Where the amount allowed is allowed as a deduction from the value⁸⁷ of property liable to a debt or incumbrance created by the deceased, it shall not exceed the amount, if any, which would be allowed under subsection (1) of section seven of the Finance Act, 1894, if section forty-four of the Finance Act, 1940, had not been passed.

FOURTH SCHEDULE

ENEMY PROPERTY

* * * * *

PART II

ESTATE DUTY

1. Property which, but for the operation of the law relating to trading with the enemy, would, for the purposes of the enactments relating to

⁸⁷ Words in square brackets substituted by F. A., 1950, s. 46, (2) (b) as to deaths after April 18, 1950. The original paragraph read thus:—

“Where, if section forty-four of the Finance Act, 1940, had not been passed and section three of the Finance Act, 1894 (which relates, amongst other things, to property which the deceased has parted with before his death for consideration) had been applied to the property which was the subject matter of the disposition, a deduction would have been allowable under subsection (2) of that section for partial consideration, the amount allowed shall not exceed the amount of that deduction.”

estate duty, pass on the death of a person or be included to a particular extent in property so passing shall, on the death of that person, be deemed for those purposes to pass or to be included to that extent in property so passing, as the case may be.

2. Where, but for the operation of the law relating to trading with the enemy, there would have existed at the death of the deceased a debt for which an allowance would have been made under subsection (1) of section seven of the Finance Act, 1894, by deduction from the value of any property deemed to pass as aforesaid, an allowance of the like amount shall be made, and deducted from the value of that property.

3. On the death of a person who, immediately before his death, would, but for the operation of the law relating to trading with the enemy, have been entitled to any property in the hands of or money payable to a custodian, the custodian shall be accountable for any estate duty in respect of any property of which the deceased would, but for the operation of the said law, have been competent to dispose at his death, but shall not be liable for any duty in excess of the amount which can be raised from, or from the proceeds of, property which is in his hands when he first receives notice of the death or which thereafter comes into his hands, being in either case property of which the deceased would have been competent to dispose as aforesaid.

4. No property shall be deemed for the purposes of section four of the Finance Act, 1894, to be property in which the deceased never had an interest if the deceased would at some time have had an interest therein but for the operation of the law relating to trading with the enemy.

5. A custodian shall, on demand of the Commissioners of Inland Revenue, pay or cause to be paid, out of property in his hands or money payable to him, any sum stated in the demand to be due in respect of, or of interest on, estate duty, being duty for the satisfaction of which that property or money is, or would, but for the operation of the law relating to trading with the enemy be, available.

6. Where a custodian releases to the executor of any person everything in his hands to which the executor would, but for the operation of the law relating to trading with the enemy, be entitled, the executor shall be accountable for all estate duty and interest on estate duty for the satisfaction of which the property released is, or but for the operation of the said law would have been, available, in so far as that duty and interest remains unpaid and the custodian shall cease to be accountable therefor.

7. This Part of this Schedule shall have effect, and be deemed always to have had effect, in relation to deaths occurring on or after the third day of September, nineteen hundred and thirty-nine:

Provided that, where before the passing of this Act a trustee or executor has distributed any property, his maximum liability for duty and interest remaining unpaid shall not exceed the amount which can be raised from, or from the proceeds of, property in his hands at the passing of this Act or coming into his hands thereafter, being in either case property which he received as trustee or executor.

* * * * *

PART IV

GENERAL

1.—(1) Any custodian and any person who holds any property to the order of any custodian, on being requested in writing by the Commissioners of Inland Revenue or the Special Commissioners so to do, shall furnish to the Commissioners making the request, within such time, not being less than twenty-eight days, as may be specified therein, such particulars as those Commissioners may require for the purpose of enabling any tax or duty to be charged or recovered in accordance with the provisions of this Schedule.

(2) If any person other than a custodian fails without reasonable excuse to comply with any request under this paragraph within the time specified in the request he shall be liable to a penalty not exceeding fifty pounds and, after judgment has been given for that penalty, to a further penalty of the like amount for every day during which the failure continues.

2. In this Schedule the following expressions have the meanings hereby respectively assigned to them, that is to say—

“the law relating to trading with the enemy” includes the Trading with the Enemy Act, 1939, the Defence (Trading with the Enemy) Regulations, 1940, and any orders made by the Treasury or the Board of Trade under or by virtue of that Act or those Regulations, and, except in relation to property in enemy territory within the meaning of that Act, includes also any corresponding law of any country or territory outside the United Kingdom;

“custodian” means a custodian of enemy property appointed under the said Act;

“property” has the meaning assigned to it by section seven of the said Act;

and any reference in this Schedule to any money, property or income received by or in the hands of a custodian shall be construed as including a reference to money, property or income held to the order of a custodian.

3. . . . Part II of this Schedule shall be construed as one with Part I of the Finance Act, 1894. . . .

The Finance (No. 2) Act, 1945

(9 & 10 GEO. 6, c. 18)

[20th December 1945.]

PART V

RELIEF FROM DOUBLE TAXATION

* * * * *

54.⁸⁸—(1) If His Majesty by Order in Council declares that arrangements specified in the Order have been made with the Government of any territory outside the United Kingdom with a view to affording relief from double taxation in relation to

⁸⁸ Extended by F. A., 1948, s. 77.

estate duty payable under the laws of the United Kingdom and any duty of a similar character imposed under the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall, notwithstanding anything in any enactment, have effect so far as they provide for relief from estate duty, or for determining the place where any property is to be treated as being situated for the purposes of estate duty.

(2) Where arrangements have effect by virtue of this section—

(a) subsection (4) of section seven of the Finance Act, 1894 (which provides for relief in respect of duty payable in a foreign country) shall not have effect in relation to duty to which the arrangements apply chargeable under the laws of the territory concerned; and

(b) if the territory concerned is one to which section twenty of the Finance Act, 1894, applies, no allowance shall be made under that section in respect of duty to which the arrangements apply chargeable under the laws of that territory.

(3) Any arrangements to which effect is given under this section may include provision for relief from duty in the case of deaths occurring before the passing of this Act or before the making of the arrangements and provisions as to property which is not itself subject to double duty, and the provisions of this section shall have effect accordingly.

(4) Notwithstanding anything in the Government of Ireland Act, 1920, the Parliament of Northern Ireland shall, as respects estate duty payable under the laws of Northern Ireland, have power to make laws for purposes similar to the purposes of this section.

55.—(1) Where any arrangements have effect by virtue of this Part of this Act, the obligation as to secrecy imposed by any enactment shall not prevent the Commissioners of Inland Revenue or any authorised officer of the Commissioners of Inland Revenue from disclosing to any authorised officer of the Government with which the arrangements are made such information as is required to be disclosed under the arrangements.

(2) Where a person beneficially entitled to the income from any securities, as defined by section eighteen of the Finance Act, 1939 (which empowers the Special Commissioners to obtain information as to income from securities) is resident in a territory to which arrangements with respect to income tax which have effect under this Part of this Act relate, subsection (5) of that section shall not exempt any bank from the duty of disclosing to the Special Commissioners particulars relating to the income of that person.

56.—(1) Any Order in Council made under this Part of this Act may be revoked by a subsequent Order in Council, and any such revoking Order may contain such transitional provisions as appear to His Majesty to be necessary or expedient.

(2) Before any Order proposed to be made under this Part of this Act is submitted to His Majesty in Council, a draft thereof shall be laid before the Commons House of Parliament, and the Order shall not be so submitted unless an Address is presented to His Majesty by that House praying that the Order be made.

57.⁸⁹—(1) The following provisions of this section shall have effect where an interest in land—

(a) is compulsorily acquired by a government department or a local or public authority within the meaning of the Acquisition of Land (Assessment of Compensation) Act, 1919; or

(b) is acquired by agreement by such a government department or local or public authority who, when the agreement is made, are authorised by, or are or can be authorised under, any enactment to acquire that interest in land compulsorily,

and, in either case, the date of acquisition falls within the period of five years from the seventeenth day of November, nineteen hundred and forty-four.

(2) If it is proved to the satisfaction of the Commissioners of Inland Revenue—

(a) that estate duty has been paid, or is payable, in respect of the whole of the interest, and that that interest was valued for the purposes of that duty as at a date after the thirty-first day of March, nineteen hundred and thirty-nine, and before the date of acquisition; and

(b) that the persons to whom the interest passed beneficially on the death on which the duty was payable were the same persons as were beneficially interested therein at the date of acquisition, and the beneficial interests which they respectively took on the death were the same beneficial interests as they respectively had at the date of acquisition; and

(c) that the interest was the same in all respects and with the same incidents at the date of acquisition and at all dates relevant for the purpose of ascertaining the duty; and

(d) that the land in which the interest subsisted was in the same state and with the same incidents and held with the same land at the date of acquisition and at all dates relevant for the purpose of ascertaining the duty; and

⁸⁹ Extended by F. A., 1949, s. 32.

(e) that the duty fell or falls to be wholly borne by the persons who are beneficially interested at the date of the acquisition according to the respective interests which they then had; and

(f) that the acquisition did not operate to sever the land from land with which it was held at any of the dates relevant for the purpose of ascertaining the duty, the amount of duty payable in respect of the interest shall, where necessary, be reduced by repayment or remission of duty so as not to exceed the amount which would have been payable in respect thereof if the principal value of the interest had been equal to the amount of the compensation or price payable for the purchase thereof, including, in the case of compensation, any supplement thereto under section fifty-eight or section fifty-nine of the Town and Country Planning Act, 1944, or any corresponding enactment relating to Scotland.

(8) Where the Commissioners are satisfied that the provisions of the last preceding subsection would have had effect but for all or any of the following facts, that is to say—

(a) that the requirement in paragraph (a) thereof is not fulfilled in that the duty was paid or payable on part of the interest only; or

(b) that one or more of the requirements respectively specified in paragraphs (b) to (e) thereof are only partly fulfilled; or

(c) that the requirement in paragraph (f) thereof is not fulfilled,

they may grant to any of the persons paying or bearing any of the duty such relief by repayment or remission of duty as may seem to them just and reasonable.

* * * * *

(5) An interest which is limited to expire, or is subject to an interest which is limited to expire, shall not be treated for the purposes of this section as being the same in all respects at different dates.

(6) In this section, the expression “the date of acquisition” means—

(a) in the case of a compulsory acquisition, the date of the service of the notice to treat; and

(b) in the case of an acquisition by agreement, the date of the making of the agreement,

and the reference in this subsection to the service of the notice to treat shall be taken to include a reference to the constructive service of such a notice which, by virtue of the Sixth Schedule to the Town and Country Planning Act, 1944, or by virtue of any other enactment, is to be deemed to be served.

* * * * *

62.—(1) This Act may be cited as the Finance (No. 2) Act, 1945.

* * * * *

(5) Parts V and VI of this Act, so far as they relate to estate duty, shall be construed as one with Part I of the Finance Act, 1894.

(6) Any reference in this Act to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(7) Save as otherwise expressly provided, such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

The Finance Act, 1946

(9 & 10 GEO. 6, c. 64)

[1st August 1946.]

* * * * *

PART V

DEATH DUTIES

46. In the case of persons dying on or after the tenth day of April, nineteen hundred and forty-six—⁹⁰

* * * * *

- (c) the enactments mentioned in Part III of the Tenth Schedule to this Act shall have effect subject to the amendments specified in that Part of that Schedule, being amendments consequential on the relief of small estates from payment of estate duty which is effected by the preceding provisions of this section.

47. The enactments mentioned in Part I of the Eleventh Schedule to this Act (which relate to the effect for estate duty purposes of gifts inter vivos and of certain other transactions

⁹⁰ Paragraphs (a) and (b), repealed by F. A., 1949, s. 28 (1), and Eleventh Schedule, as to deaths on or after July 30, 1949, read as follows:—

“(a) the scale set out in Part I of the Tenth Schedule to this Act shall be substituted for the scale set out in the Sixth Schedule to the Finance (No. 2) Act, 1940, as the scale of rates of estate duty; and

(b) as respects the agricultural value of agricultural property, the entries set out in Part II of the Tenth Schedule to this Act shall be substituted for the entries relating to estates the principal value of which does not exceed ten thousand pounds in the scale of rates set out in the Third Schedule to the Finance Act, 1919; and ”

effected and circumstances prevailing in the life time of the deceased) shall, in the case of persons dying on or after the tenth day of April, nineteen hundred and forty-six, have effect subject to the amendments specified in that Part of that Schedule, being amendments extending to five years before the death the period of three years before the death which is material for the purposes of those enactments and amendments consequential on that extension :

Provided that the amendments specified in the said Part I shall have effect subject to the transitional provisions set out in Part II of the said Schedule, being provisions which—

- (a) exempt gifts made before the tenth day of April, nineteen hundred and forty-three from the operation of the said amendments so far as they relate to gifts inter vivos; and
- (b) make analogous provision in relation to others of the said amendments.

PART VI

THE NATIONAL LAND FUND

48.—(1) There shall be established a fund to be called the National Land Fund, which shall be under the control and management of the Treasury and shall be used for the purposes mentioned in this Part of this Act and for such other purposes as Parliament may hereafter determine.

(2) There shall be issued to the National Land Fund out of the Consolidated Fund or the growing produce thereof, at such times during the financial year ending with the thirty-first day of March, nineteen hundred and forty-seven, as the Treasury may direct, the sum of fifty million pounds in all.

(3) Any sums from time to time standing to the credit of the National Land Fund which are not immediately required for the purposes thereof may be invested in such manner as the Treasury may direct.

(4) The Treasury shall, as respects each financial year, prepare an account of receipts into and payments out of the National Land Fund, and any account prepared under this subsection shall, on or before the thirtieth day of November next following the expiration of the financial year in question, be transmitted to the Comptroller and Auditor General who shall examine and certify the account and lay copies thereof, together with his report thereon, before both Houses of Parliament.

49. In subsection (1) of the said section fifty-six⁹¹ for the words “such part of the property” there shall be substituted the words “any such real (including leasehold) property”.

⁹¹ Viz., of the F. (1909–10) A., 1910, as appears from the original terms of this section (49), its form as given above being as amended by F. A., 1949, s. 52 (10) and Eleventh Schedule.

50.—(1) The provisions of this section shall have effect where, under section fifty-six of the Finance (1909–10) Act, 1910, the Commissioners of Inland Revenue accept any property in satisfaction or part satisfaction of any duty.

(2) The Treasury may, if they think fit, direct that a sum equal to the amount of the duty, or, as the case may be, the part of the duty, shall be paid to the Commissioners out of the National Land Fund and dealt with by them as if it were a payment on account of the duty.

(3) The property shall be disposed of in such manner as the Treasury may direct, and in particular, but without prejudice to the generality of the preceding provision, the Treasury may direct that all or any of the property shall, on such conditions as they may direct, be transferred to or to trustees for any body of persons not established or conducted for profit and having as its object, or one of its objects, the provision, improvement or preservation of amenities enjoyed, or to be enjoyed, by the public or the acquisition of land to be used by the public.

(4) The Treasury shall lay before both Houses of Parliament as soon as may be after the end of each financial year a statement giving particulars of any transfers under subsection (3) of this section to or to trustees for any such body as is therein mentioned in that year.

(5) Any reference in the preceding provisions of this section to the disposal or transfer of any property shall be deemed to include a reference to the granting of a lease or a sub-lease for any period and on any terms in respect of that property.

51.—(1) Where the Treasury have determined that any property accepted or to be accepted by the Commissioners under section fifty-six of the Finance (1909–10) Act, 1910, is to be disposed of under subsection (3) of the last preceding section, whether to or to trustees for any such body as is therein mentioned or to any other person, they may direct that disposal thereof shall be effected by means of a transfer direct to or to trustees for that body or direct to any other person to whom the property is to be disposed of, instead of the property being transferred to the Commissioners.

(2) The Treasury may in any case direct that any property accepted by the Commissioners under the said section fifty-six shall, instead of being transferred to the Commissioners, be transferred to a person nominated by the Treasury, and where property is transferred under this subsection, the person to whom it is transferred shall, subject to any directions thereafter given as to the disposal thereof under subsection (3) of the last preceding section, hold the property and manage it in accordance with such directions as may be given to him by the Treasury.

(3) Where under subsection (2) of the last preceding section, the Treasury direct a payment to be made out of the National

Land Fund in respect of any property, any sums received on the disposal of that property or any part thereof under subsection (3) of that section, including any premium received on or rent payable under any lease or sub-lease of any property disposed of thereunder by way of lease or sub-lease, and any sums otherwise received in connection with that property, shall be paid into the National Land Fund, and any sums required to defray any expenses incurred in connection with that property in so far as it has not yet been disposed of under the said subsection (3) (including, in the case of leasehold property, any rent payable in respect thereof) shall be defrayed out of the National Land Fund.

(4) No stamp duty shall be payable on any conveyance or transfer of property made under subsection (3) of the last preceding section to or to trustees for any such body of persons as is mentioned in the said subsection (3) or on any conveyance or transfer made under subsection (2) of this section to any such person nominated by the Treasury as is mentioned in the said subsection (2).

* * * * *

PART VIII

MISCELLANEOUS

* * * * *

67.—(1) This Act may be cited as the Finance Act, 1946.

* * * * *

(6) Part V of this Act shall be construed as one with Part I of the Finance Act, 1894.

(8) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(9) Save as otherwise expressly provided, such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * *

(11) The enactments specified in Parts II and III of the Twelfth Schedule to this Act are hereby repealed to the extent mentioned in the third column of those Parts of that Schedule—

* * * * *

(b) in the case of the enactments specified in Part III of that Schedule, as respects persons dying on or after the tenth day of April, nineteen hundred and forty-six.

TENTH SCHEDULE

PART I

GENERAL SCALE OF RATES OF ESTATE DUTY ⁹²

Principal Value of Estate			Rate per cent. of Duty	Value below which the duty is reduced by s. 13 (1) of the Finance Act, 1914 ⁹³
£	Not exceeding	£	£	£ s. d.
Exceeding	2,000	and not exceeding	2,000	Nil
"	3,000	"	3,000	1
"	5,000	"	5,000	2
"	7,500	"	7,500	3
"	10,000	"	10,000	4
"	12,500	"	12,500	6
"	15,000	"	15,000	8
"	20,000	"	20,000	10
"	25,000	"	25,000	12
"	30,000	"	30,000	14
"	35,000	"	35,000	16
"	40,000	"	40,000	18
"	45,000	"	45,000	20
"	50,000	"	50,000	22
"	60,000	"	60,000	24
"	75,000	"	75,000	27
"	100,000	"	100,000	30
"	150,000	"	150,000	35
"	200,000	"	200,000	40
"	250,000	"	250,000	45
"	300,000	"	300,000	50
"	500,000	"	500,000	55
"	750,000	"	750,000	60
"	1,000,000	"	1,000,000	65
"	2,000,000	"	2,000,000	70
"	2,000,000	.. ..	.. ..	75
				2,400,000 0 0

PART II ⁹²ENTRIES TO BE SUBSTITUTED FOR CERTAIN ENTRIES IN THE SCALE OF RATES
APPLICABLE TO THE AGRICULTURAL VALUE OF AGRICULTURAL PROPERTY

£	Does not exceed	£	...	...	Nil
Exceeds	2,000 and does not exceed	2,000	...	...	1
"	3,000	3,000	...	...	2
"	5,000	5,000	...	...	3
"	7,500	7,500	...	...	4
"	10,000	10,000	...	...	4

⁹² Repealed by F. A., 1949, Seventh Schedule, as to deaths on or after July 30, 1949.⁹³ This column does not form part of the statute.

PART III

CONSEQUENTIAL AMENDMENTS

1. In subsection (1) of section thirty-three of the Customs and Inland Revenue Act, 1881, the words "and also, in case the estate and effects shall exceed the value of one hundred pounds, the further sum of thirty shillings for stamp duty" shall cease to have effect; subsection (5) of that section shall cease to have effect; and subsection (2) of section thirty-four of that Act, and sections thirty-five and thirty-six of that Act, shall cease to have effect.

2. In subsection (1) of section sixteen of the Finance Act, 1894, for the words "sections thirty-three, thirty-five and thirty-six" there shall be substituted the words "section thirty-three", for the words "is payable on the death of the deceased" there shall be substituted the words "would, if estate duty were payable in respect of estates however small the principal value thereof, be payable on the death of the deceased" and the words "and where the gross value does not exceed three hundred pounds the fixed duty shall be thirty shillings, and where the gross value exceeds three hundred pounds and does not exceed five hundred pounds the fixed duty shall be fifty shillings" shall cease to have effect.

3. For subsection (3) of the said section sixteen the following subsection shall be substituted—

"(3) Where the net value of the property, real and personal, in respect of which estate duty would, if estate duty were payable in respect of estates however small the principal value thereof, be payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed [two] thousand pounds, ⁹⁴ such property, for the purpose of estate duty, shall not be aggregated with any other property, but shall form an estate by itself . . .".

4. Subsection (5) of the said section sixteen shall cease to have effect.

* * * * *

6. In subsection (2) of section sixty-one of the Finance (1909-10) Act, 1910, for the words "it is claimed that a fixed duty is payable in respect of any property under subsection (1) of section sixteen of the principal Act as being property of a gross value not exceeding three hundred pounds or five hundred pounds, as the case may be", there shall be substituted the words "it is claimed for the purposes of subsection (1) of section sixteen of the principal Act that the gross value of any property does not exceed five hundred pounds".

* * * * *

ELEVENTH SCHEDULE

AMENDMENTS AS TO GIFTS INTER VIVOS, ETC.

PART I

AMENDMENTS

1. In subsection (1) of section fifty-nine of the Finance (1909-10) Act, 1910, for the words "three years" there shall be substituted, in both places where those words occur, the words "five years".

⁹⁴ "Two" substituted for "one" by F. A., 1947, s. 50 (1).

2. In subsection (2) of section thirty-one of the Finance Act, 1939, for the words "three years" there shall be substituted the words "five years".

3. In subsection (2) of section forty-three of the Finance Act, 1940, for the words "three years" there shall be substituted the words "five years".

4. In subsection (1) of section forty-six of the Finance Act, 1940, for the words "three years" there shall be substituted the words "five years" and for subsection (2) of that section (as amended by section thirty-five of the Finance Act, 1944) there shall be substituted the following subsection:—

"(2) The extent to which the assets of the company are to be deemed to be included as aforesaid shall be the proportion ascertained by comparing the aggregate amount of the benefits accruing to the deceased from the company in the last five accounting years with the aggregate amount of the net income of the company for the said years:

Provided that—

(a) where, in any of the said accounting years, the company sustained a loss, the amount of that loss shall be deducted in ascertaining the said aggregate net income of the company;

(b) where the company came into existence in the last but three, or in the last but two, or in the last but one, or the in last, of the said accounting years, the references in this subsection to the said accounting years shall be construed as references to the last four, the last three, the last two or the last, of those years, as the case may be."

5. In subsection (1) of section forty-seven of the Finance Act, 1940, for the words "three years", in both places where those words occur, there shall be substituted the words "five years".

6. In subsection (3) of section forty-eight of the Finance Act, 1940, for the words "three years" in both places where those words occur there shall be substituted the words "five years".

7. In subsection (1) of section fifty-five and paragraph (a) of subsection (1) of section fifty-eight of the Finance Act, 1940, and in the Seventh Schedule to that Act, for the words "three years", wherever those words occur, there shall be substituted the words "five years".

8. Section thirty-five of the Finance Act, 1944, shall cease to have effect.

PART II

TRANSITIONAL PROVISIONS

1. In the case of persons dying on or after the tenth day of April, nineteen hundred and forty-six, but before the tenth day of April, nineteen hundred and forty-eight, the following enactments amended by Part I of this Schedule, that is to say—

(a) subsection (1) of section fifty-nine of the Finance (1909-10) Act, 1910;

(b) subsection (2) of section thirty-one of the Finance Act, 1939;

(c) subsection (2) of section forty-three of the Finance Act, 1940;

(d) subsection (3) of section forty-eight of the Finance Act, 1940; and

(e) subsection (1) of section fifty-five of the Finance Act, 1940, paragraph (a) of subsection (1) of section fifty-eight of that Act, and, for the purpose of determining whether the conditions set out in paragraph (b) of subsection (1) of the said section fifty-five are satisfied in relation to a company, subsection (1) of section forty-seven of and paragraph 2 of the Seventh Schedule to that Act,

shall, as so amended, have effect as if the references therein to the five years

before or ending with the death of the deceased were references to the said five years less so much thereof as fell before the tenth day of April, nineteen hundred and forty-three.

2.—(1) No part of the assets of any company shall be deemed by virtue of subsection (1) of section forty-six of the Finance Act, 1940, to be included in the property passing on the death of any person dying on or after the tenth day of April, nineteen hundred and forty-six, but before the tenth day of April, nineteen hundred and forty-eight, unless benefits accruing to the deceased from the company accrued to him on or after the tenth day of April, nineteen hundred and forty-three.

(2) The provisions of the Finance Act, 1940, as to what are to be treated as benefits accruing to the deceased from the company and as to when a benefit is treated as having accrued therefrom shall, as amended by this Schedule, apply for the purposes of this paragraph as they apply for the purposes of the said section forty-six, subject to the modification that the references in section forty-seven of that Act, and paragraph 2 of the Seventh Schedule to that Act, to the five years ending with the death of the deceased shall be treated as references to the said five years less so much thereof as fell before the tenth day of April, nineteen hundred and forty-three.

TWELFTH SCHEDULE

REPEALS

PART III

ENACTMENTS REPEALED AS RESPECTS PERSONS DYING ON OR AFTER THE TENTH DAY OF APRIL, 1946

Session and Chapter	Short Title	Extent of Repeal
44 & 45 Vict. c. 12	The Customs and Inland Revenue Act, 1881.	In section thirty-three, in subsection (1), the words "and also, in case the estate and effects shall exceed the value of one hundred pounds, the further sum of thirty shillings for stamp duty", and subsection (5); subsection (2) of section thirty-four, and sections thirty-five and thirty-six.
57 & 58 Vict. c. 30	The Finance Act, 1894.	In section sixteen, in subsection (1) the words "and where the gross value does not exceed three hundred pounds the fixed duty shall be thirty shillings, and where the gross value exceeds three hundred pounds and does not exceed five hundred pounds the fixed duty shall be fifty shillings" and subsection (5)
* * 7 & 8 Geo. 6, c. 23	* * The Finance Act, 1944.	* * Section thirty-five.

The Finance Act, 1947

(10 & 11 GEO. 6, c. 35)

[31st July 1947.]

PART V**DEATH DUTIES**

* * * * *

50.—(1) In the case of a person dying on or after the sixteenth day of April, nineteen hundred and forty-seven, the following enactments, namely—

- (a) subsection (3) of section sixteen of the Finance Act, 1894 (which provides for treating as an estate by itself for the purposes of estate duty, and for exempting from legacy and succession duty, any estate not exceeding one thousand pounds exclusive of property settled otherwise than by the will of the deceased);

* * * * *

shall have effect with the words “two thousand pounds” instead of the words “one thousand pounds”, . . .

* * * * *

51. Where, in consequence of the restrictions imposed by the Defence (Finance) Regulations, 1939, or the Exchange Control Act, 1947, on the issue of coupons representing dividends or interest, bearer securities situate outside the United Kingdom have been or are converted into or exchanged for registered securities situate in Great Britain, then for the purposes of any claim for estate duty in respect of the passing of the registered securities on a death occurring after the thirty-first day of March, nineteen hundred and forty-seven, they shall be treated as situate outside Great Britain :

Provided that this section shall apply only if, between the conversion or exchange and the death (or, in a case where the securities pass by reason of a gift inter vivos or of the disposition or determination of an interest limited to cease on the death, between the conversion or exchange and the gift, disposition or determination), the securities neither have been disposed of nor have passed on the death of a person competent to dispose thereof.

* * * * *

74.—(1) This Act may be cited as the Finance Act, 1947.

* * * * *

(6) Part V of this Act shall be construed as one with Part I of the Finance Act, 1894.

* * * * *

(9) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as

a reference to that enactment as amended by or under any other enactment, including this Act.

(10) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * *

The Finance Act, 1948

(11 & 12 GEO. 6, c. 49)

[30th July 1948.]

PART VIII

MISCELLANEOUS

76.—(1) For the purposes of the last paragraph of subsection (1) of section eleven of the Customs and Inland Revenue Act, 1889 (which, as applied for the purposes of estate duty, provides that money received under a policy of assurance effected by the deceased person on his life and kept up by him shall be treated as passing on his death) so much of the premiums paid on any policy of assurance as was, by virtue or in consequence of a settlement made by the deceased, paid out of property, whether or not provided by the deceased, comprised in the settlement or out of income, whether or not provided by the deceased, arising under the settlement, shall be treated as having been paid by the deceased :

Provided that any payments which were not made either out of property provided directly or indirectly by the deceased for the purposes of the settlement, or out of property representing that property, or out of income provided directly or indirectly by the deceased whether arising from such property or otherwise, shall not be treated as having been made by the deceased if the Commissioners of Inland Revenue are satisfied that those payments were not made as part of any reciprocal arrangements between the deceased and any other person.

(2) For the purposes of the said enactment in the Customs and Inland Revenue Act, 1889, a policy of assurance on the life of a deceased person effected by virtue or in consequence of a settlement made by the deceased shall be treated as having been effected by the deceased.

(3) This section shall be deemed to have had effect as respects persons dying on or after the seventh day of April, nineteen hundred and forty-eight.

(4) For the purposes of this section—

(a) the expression “settlement” includes any disposition, trust, covenant, agreement or arrangement; and

(b) a person shall be deemed to have made a settlement if

he has made or entered into the settlement directly or indirectly, and in particular (but without prejudice to the generality of the foregoing words of this paragraph) if he has provided or undertaken to provide funds directly or indirectly for the purposes of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

77.—(1) If His Majesty by Order in Council declares that arrangements specified in the Order have been made with the Government of any territory outside the United Kingdom, the laws of which do not provide for a duty similar to estate duty, with a view to affording relief from double taxation in relation to estate duty payable under the laws of the United Kingdom and any duty leviable on, or by reference to, death imposed under the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall, notwithstanding anything in any enactment, have effect so far as they provide for determining the place where any property is to be treated as being situated for the purposes of estate duty.

(2) Any arrangements to which effect is given under this section may include provisions as respects deaths occurring on or after the seventh day of April, nineteen hundred and forty-eight, and provisions as to property which is not itself subject to double duty, and the provisions of this section shall have effect accordingly.

(3) Any order in Council made under this section may be revoked by a subsequent Order in Council, and any such revoking Order may contain such transitional provisions as appear to His Majesty to be necessary or expedient.

(4) Before any Order proposed to be made under this section is submitted to His Majesty in Council, a draft thereof shall be laid before the Commons House of Parliament, and the Order shall not be so submitted unless an address is presented to His Majesty by that House praying that the Order be made.

(5) Notwithstanding anything in the Government of Ireland Act, 1920, the Parliament of Northern Ireland shall, as respects estate duty payable under the laws of Northern Ireland, have power to make laws for purposes similar to the purposes of this section.

* * * * *

82.—(1) This Act may be cited as the Finance Act, 1948.

* * * * *

(7) So much of Part VIII of this Act as relates to estate duty shall be construed as one with Part I of the Finance Act, 1894.

(8) Any reference in this Act to any other enactment shall,

except so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(9) Save as otherwise expressly provided, such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

The Lands Tribunal Act, 1949

(12 & 13 GEO. 6, c. 42)

[14th July 1949]

1.—(1) There shall be set up, to exercise the jurisdiction hereafter mentioned in this Act, the following tribunals, namely—

(a) a tribunal for Scotland, to be called “the Lands Tribunal for Scotland”; and

(b) a tribunal for the remainder of the United Kingdom, to be called “the Lands Tribunal”.

(2) Except in so far as the context otherwise requires, references in this Act to the Lands Tribunal shall be taken, in relation to Scotland, as references to the Lands Tribunal for Scotland.

(3) There shall be referred to and determined by the Lands Tribunal

(a) any question which is by any Act (including a local or private Act) directed, in whatever terms, to be determined by a person or one or more persons selected from either of the following panels, that is to say,—

(i) the panel of official arbitrators appointed under the Acquisition of Land Act; and

(ii) the panel of referees appointed under Part I of the Finance (1909–10) Act, 1910;

or which is so directed to be determined in the absence of agreement to the contrary;

* * * * *

2.—(1) The Lands Tribunal shall consist of a President and such number of other members as the Lord Chancellor may determine, to be appointed by the Lord Chancellor.

* * * * *

(9) In relation to the Lands Tribunal for Scotland this section shall have effect with the substitution—

(a) of references to the Lord President of the Court of Session . . . for references to the Lord Chancellor;

* * * * *

3.—(1) Subject to the provisions of this Act, the jurisdiction of the Lands Tribunal may be exercised by any one or more of its members . . .

* * * * *

(4) A decision of the Lands Tribunal shall be final :

Provided that any person aggrieved by the decision as being erroneous in point of law may, within such time as may be limited by rules of court, require the tribunal to state and sign a case for the decision of the court and, where the decision of the Lands Tribunal is given on a review by way of appeal of the previous decision of another person, that person if dissatisfied with the decision of the Lands Tribunal shall be treated for this purpose as a person aggrieved thereby.

(5) Subject to the following provisions of this section, the Lands Tribunal may order that the costs of any proceedings before it incurred by any party shall be paid by any other party and may tax and settle the amount of any costs to be paid under any such order or direct in what manner they are to be taxed.

(6) Subject to the provisions of this Act, rules may be made for regulating proceedings before the Lands Tribunal⁹⁵ and, subject to the approval of the Treasury, the fees chargeable in respect of those proceedings, and may in particular—

(a) make provision—

(i) as to the form in which any decision of the Tribunal is to be given, and as to the amendment of any such decision in pursuance of any directions which may be given by the court dealing with an appeal under this section ;

(ii) as to the time within which any proceedings before the Tribunal are to be instituted ;

(iii) as to the evidence which may be required or admitted in any such proceedings ;

(iv) provide for the Tribunal to sit with assessors when dealing with cases calling for special knowledge . . .

(v) apply in relation to the Tribunal any of the provisions of the Arbitration Acts, 1889 to 1934.

* * * * *

(9) Subject to this Act, any rules made by the Reference Committee under the Acquisition of Land Act, or by the Reference Committee under the Finance (1909-10) Act, 1910, which are in force immediately before the commencement of this Act shall, so far as they relate to matters with respect to which there is power to make rules under this section, have effect with any necessary modifications as if made in exercise of that power ; and any instrument prescribing the fees chargeable under either

⁹⁵ For the Rules so made, see below, p. 362.

of the said Acts which is then in force shall also have effect as aforesaid.

Subject to this Act any reference to rules made by either of the said Committees or to any such instrument as aforesaid shall, unless the context otherwise requires, include a reference to the rules made or having effect under this section.

* * * * *

(11) Subject to the following subsection—

(a) the court referred to in subsection (4) of this section shall be the Court of Appeal;

(b) the rule-making authority for the purposes of this Act shall be the Lord Chancellor.

(12) In relation to the Lands Tribunal for Scotland, the following provisions shall have effect—

(a) the court referred to in subsection (4) of this section shall be the Court of Session, and no appeal shall lie from a decision of the Court of Session in a case stated under that subsection except with the leave of that court;

(b) the rule-making authority for the purposes of this Act shall be the Lord President of the Court of Session;

* * * * *

7.—(1) The transfer of any jurisdiction to the Lands Tribunal by, or under this Act, shall not affect the principles on which any question is to be determined or the persons on whom the determination is binding, or any provision which requires particular matters to be expressly dealt with or embodied in the determination, or which relates to evidence and is not contained in the Acquisition of Land Act.

* * * * *

9.—(1) This Act shall not affect the law in force in Northern Ireland, except in relation to the transfer of any jurisdiction to the Lands Tribunal under section four thereof and in relation to any jurisdiction so transferred.

* * * * *

10.—(1) This Act may be cited as the Lands Tribunal Act, 1949.

(2) Sections one to four of this Act shall come into force on such day as His Majesty may by Order in Council appoint and different days may be appointed for Scotland and for the remainder of the United Kingdom.

(3) References in this Act to the Commencement thereof refer, in relation to any part of the United Kingdom, to the beginning of the day so appointed for that part,

* * * * *

(4) The enactments specified in the Second Schedule to this Act are hereby repealed, as from the commencement of this Act, to the extent specified in the third column of that Schedule.

SCHEDULES

* * * * *

SECOND SCHEDULE

REPEALS

Session and Chapter	Short Title	Extent of Repeal
* * 10 Edw. 7 & 1 Geo. 5, c. 8.	* * The Finance (1909-10) Act, 1910.	* * In section thirty-three, subsection (2) from the first "and" onwards and subsections (3) to (5); section thirty- four.
* *	* *	* *

The Finance Act, 1949

(12 & 13 GEO. 6, c. 47)

[80th July 1949]

* * * * *

PART III

DEATH DUTIES AND CORPORATION DUTY

27.—(1) Legacy duty and succession duty shall not be chargeable on a legacy derived from a testator or intestate dying after the commencement of this Part of this Act, or on a succession conferred after that commencement, nor on any other legacy or succession in so far as the duty would apart from this section be payable in connection with any such event as is mentioned in the next following subsection.

(2) The events referred to in the foregoing subsection are any of the following events happening after the commencement of this Part of this Act, that is to say—

(a) the death of any person;

(b) the determination or failure of any charge, estate, interest or trust;

- (c) the exercise of a power of appointment ;
- (d) the making of any payment or the application of any property, if the duty would apart from this section be chargeable—

- (i) under section eleven of the Legacy Duty Act, 1796, or under that section as applied by section thirty-two of the Succession Duty Act, 1853 (which deal with benefits of uncertain amount receivable from time to time); or

- (ii) under section twenty-five of the Succession Duty Act, 1853 (which deals with premiums for the renewal of a lease or the grant of a reversionary lease);

- (e) any other event which, under the provisions of the relevant will or disposition or the rules governing the distribution of the intestate's estate, affects the right to the legacy or succession or to the enjoyment thereof or which changes the nature of the property comprised therein or any part of that property.

(3) The reference in subsection (1) of this section to duty being payable in connection with an event shall, in relation to legacy duty, include its being payable when the legacy is paid, delivered, retained, satisfied or discharged in connection with that event, and for the purposes of this section the expression "legacy" includes residue and share of residue.

(4) Where this section applies to the succession duty on a succession, it shall apply also to any temporary estate duty which would otherwise be chargeable thereon under section six of the Customs and Inland Revenue Act, 1889.

28.—(1) In the case of persons dying after the commencement of this Part of this Act, the scale set out in the Seventh Schedule to this Act shall be substituted for the scale set out in Part I of the Tenth Schedule to the Finance Act, 1946, as the scale of rates of estate duty, and the scale in accordance with which estate duty is to be charged on the agricultural value of agricultural property under section twenty-three of the Finance Act, 1925, shall (instead of being that referred to in that section) be the same scale as applies in other cases with a reduction of forty-five per cent. in each of the rates.

(2) As respects property passing on the death of a person dying after the commencement of this Part of this Act, subsection (2) of section two of the Finance Act, 1894 (which exempts from estate duty property situate abroad and not chargeable with legacy duty or succession duty), and section twenty-four of the Finance Act, 1936 (which restricts the exemption conferred by the said subsection (2)), shall not have effect; but that property shall be deemed for the purposes of estate duty not to include any property passing on the death

which is situate out of Great Britain if it is shown that the proper law regulating the devolution of the property so situate, or the disposition under or by reason of which it passes, is the law neither of England nor of Scotland and that one at least of the following conditions is satisfied, namely,—

- (a) that the deceased did not die domiciled in any part of Great Britain;
 - (b) that the property so situate passes under or by reason of a disposition—
 - (i) made by a person who, at the date at which the disposition took effect, was domiciled elsewhere than in some part of Great Britain; and
 - (ii) not made, directly or indirectly, on behalf of, or at the expense of, or out of funds provided by, a person who at that date was domiciled in some part of Great Britain;
 - (c) that the property so situate is, by the law of the country in which it is situate, immovable property;
- or if the property so situate passes only by virtue of paragraph (c) of subsection (1) of section two of the Finance Act, 1894, as having been the subject of a gift inter vivos and it is shown that one at least of the said conditions is satisfied.

(3) In the case of persons dying after the commencement of this Part of this Act, the enactments relating to estate duty (including the provisions of section nine of the Finance Act, 1894, as to the charge of duty and the facilities for raising it) shall apply to lands and chattels so settled by Act of Parliament or royal grant that no one of the persons successively in possession thereof is capable of alienating the same as those enactments apply to other settled property, and subsection (5) of section five of the Finance Act, 1894 (which provides that estate duty on lands and chattels so settled shall be leviable on the successor's interest valued as for succession duty), shall accordingly not apply.⁹⁶

29.—(1) Where—

- (a) legacy duty or succession duty in respect of interests under a settlement has been satisfied by the payment (whether before or after the commencement of this Part of this Act) of the duty on the capital value of the settled property; and
- (b) estate duty becomes leviable on that property or any part thereof (hereafter in this section referred to as “the property passing”) by reason of its passing under the settlement on the death after that commencement of a person not competent to dispose of the property passing; and

⁹⁶ Amended, by addition of proviso, by F. A., 1950, s. 45.

(c) the property passing has not previously passed as aforesaid;

then, subject to the provisions of this section, the estate duty on the property passing shall be payable at the reduced rate obtained by deducting from the rate at which it would be payable apart from this section the rate at which the legacy or succession duty was paid, or if the second of the two last mentioned rates is the higher shall be treated as satisfied.

(2) Where by virtue of the foregoing subsection the estate duty which would otherwise be payable on the property passing is treated as satisfied, and the amount of that duty is less than the amount of the legacy or succession duty paid on the property passing, then subject to the following provisions of this section the Commissioners shall on a claim being made and on production of such evidence as they may require of the title of the claimant repay the difference between those amounts.

(3) Any sums falling to be repaid under the last foregoing subsection shall be deemed to be an accretion, as at the date at which they become payable, to the fund out of which the legacy or succession duty was paid, and the persons entitled to the repayment shall be determined accordingly :

Provided that where that fund has been vested in a person or persons beneficially entitled thereto the repayment may be made to, or to the executors of, that person or (as the case may be) any of those persons for the benefit of those entitled to the repayment.

(4) Where the property passing includes part only of the property on the capital value of which the legacy or succession duty was paid, the duty shall be apportioned for the purposes of subsection (2) of this section in such manner as the Commissioners think just.

(5) Where on a death any of the property on the capital value of which the legacy or succession duty was paid is deemed to pass to a limited extent, the foregoing subsections shall apply (whether on that or a subsequent death) as if a proportionate part of that property had passed on the first mentioned death.

(6) Any reference in this section to the rate at which the estate duty on the property passing would be payable apart from this section shall be taken as a reference to the rate per cent. representing the proportion which the amount of the duty (after allowing for any reduction or relief under any other enactment) bears to the principal value of the property passing; and any reference in this section to the rate at which legacy or succession duty was paid shall be taken as a reference to the rate per cent. representing the proportion which the total duty paid bore to the value on which it was paid.

* * * * *

81.—(1) Any exemption from estate duty conferred by

section thirty-one of the Finance Act, 1937, in relation to an estate or interest in land given, devised or bequeathed by any person to the National Trust shall, in the case of duty leviable on or with reference to a death occurring after the commencement of this Part of this Act, be granted also, and to the like extent, to any other property given, devised or bequeathed by him with that estate or interest as a source of income for the upkeep of the land.

(2) Property shall not be deemed for the purposes of this section to be given, devised or bequeathed with an estate or interest in land if either is subject to an interest or power of appointment created by the gift, devise or bequest to which the other is not subject :

Provided that for the purposes of this subsection any trust to apply income of the property for the upkeep of the land or in meeting liabilities or expenses accruing in respect of the land or the property (including a trust to accumulate income for any such purpose) shall be treated as creating the like interests in the property as may from time to time subsist in the land.

(3) Where property given, devised or bequeathed with an estate or interest in land is in the opinion of the Commissioners more than enough to provide (with a reasonable margin) for the upkeep of the land out of the income of the property, so much only as is in their opinion enough for that purpose shall be deemed to be given, devised or bequeathed as mentioned in subsection (1) of this section.

(4) In this section the expression "National Trust" means the National Trust for Places of Historic Interest or Natural Beauty or, in relation to Scotland, the National Trust for Scotland for Places of Historic Interest or Natural Beauty.

32.—(1) Where an interest in land is acquired as mentioned in subsection (1) of section fifty-seven of the Finance (No. 2) Act, 1945 (which gives partial relief from death duties on land subsequently acquired by government departments, local authorities, etc.), and the date of acquisition falls after the end of the period so mentioned but before the first day of January, nineteen hundred and fifty-four (being the terminal date for the provisions enacted in section fifty-two of the Planning Act to eliminate values attributable to vacant possession), then, subject to subsection (3) of this section, the said section fifty-seven shall apply as if the date of acquisition had fallen within the period mentioned in subsection (1) thereof.

(2) Subject as aforesaid, the said section fifty-seven (hereafter in this section referred to as "the principal section") shall apply also in relation to acquisitions by any persons to whom the Acquisition of Land (Assessment of Compensation) Act, 1919, is extended by subsection (1) of section fifty-seven of the Planning Act, as if those persons were a local or public authority

within the meaning of the said Act of 1919, and shall so apply notwithstanding that the date of acquisition fell before the commencement of this Part of this Act, if it did not fall before the passing of the Planning Act.

(3) Where either of the foregoing subsections applies to an acquisition, any reduction supposed by subsection (2) of the principal section to be made in the principal value for purposes of duty of the interest acquired shall be limited so as not to exceed the amount by which, in the opinion of the Commissioners, the compensation or price paid for the purchase of the interest would have been increased if section fifty-two of the Planning Act had not passed; and subsections (3) and (4) of the principal section shall have effect accordingly.

(4) In this section the expression "the date of acquisition" has the same meaning as in the principal section, and the expression "the Planning Act" means the Town and Country Planning Act, 1947.

(5) In the application of this section to Scotland, for references to the Town and Country Planning Act, 1947, and to sections fifty-two and fifty-seven thereof there shall respectively be substituted references to the Town and Country Planning (Scotland) Act, 1947, and to sections forty-nine and fifty-four thereof.

33.—(1) So much of paragraph (c) of subsection (1) of section two of the Finance Act, 1894, as makes gifts inter vivos property which is deemed to pass on the death of the deceased shall not apply to gifts which, in the case of any donee, do not exceed in the aggregate five hundred pounds in value or amount, if it is shown to the satisfaction of the Commissioners—

- (a) that the property taken by the donee did not include any interest in settled property; and
- (b) that bona fide possession or enjoyment of the property so taken was assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

(2) Where the foregoing subsection would apply in the case of any donee except that the Commissioners are satisfied of the facts mentioned in paragraphs (a) and (b) thereof as respects some only of the gifts to him, it shall apply to any of the gifts as respects which they are so satisfied.

(3) This section shall not be taken as affecting the relief given by subsection (2) of section fifty-nine of the Finance (1909–10) Act, 1910, where in the case of any donee the gifts do not exceed one hundred pounds in value or amount.

* * * * *

48.—(1) Upon the death of anyone who is the holder of any Government stock, the production of probate or letters of

administration granted to any person by a Court in the Isle of Man or in any of the Channel Islands having authority to make the grant, or of a certified copy of probate or letters of administration so granted, shall be of the same effect to authorise the Bank of England to transfer the stock as production of probate or letters of administration granted to that person in England :

Provided that the Bank of England shall not transfer any Government stock in pursuance of this section except on production to the Bank of a certificate from the Commissioners of Inland Revenue showing either that all death duties payable in Great Britain in respect of the stock have been paid or that no duty is payable in Great Britain in respect thereof.

(2) Where any stock is transferred in pursuance of this section, the Bank of England shall be indemnified and protected notwithstanding any defect or circumstance whatsoever affecting the validity of the probate or letters of administration in question.

(3) In this section the expression " Government stock " has the same meaning as in the Savings Banks Act, 1893.

(4) This section so far as it relates to probates and letters of administration granted by a court in the Isle of Man shall be deemed to have had effect as from the twenty-ninth day of January, nineteen hundred and forty-one (being the date on which similar provision was made in relation thereto by regulation 7B of the Defence (Finance) Regulations, 1939), and accordingly that regulation is hereby repealed.

* * * * *

52.—(1) This Act may be cited as the Finance Act, 1949.

* * * * *

(4) Part III of this Act shall be construed as one with Part I of the Finance Act, 1894.

* * * * *

(8) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(9) Save as otherwise expressly provided, such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

(10) The enactments specified in the Eleventh Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule :

Provided that the repeals effected by any Part of that Schedule shall be subject to the savings (if any) provided for at the end of that Part.

(11) The inclusion of express savings in this Act shall not be taken as affecting the application thereto of any provision of the Interpretation Act, 1889, as to the effect of repeals.

SEVENTH SCHEDULE
GENERAL SCALE OF RATES OF ESTATE DUTY

Principal Value of Estate		Rate per cent. of duty	Value below which duty is reduced by s. 13 (1), of the Finance Act, 1914 ⁹⁷			Rates on the Agricultural Value of Agricultural Property ⁹⁷	
			£	s.	d.	Rate per cent. ⁹⁷	Value below which duty is reduced by s. 13 (1), F. A., 1914 ⁹⁷
Exceeding	£	Nil	—	—	—	Nil	£ s. d.
	2,000	1	2,020	4	1	.55	2,011 1 3
	3,000	2	3,030	12	3	1.10	3,016 13 9
"	5,000	3	6,051	11	0	1.65	6,027 19 3
"	7,500	4	7,578	2	6	2.20	7,542 3 7
"	10,000	6	10,212	15	4	3.30	10,113 15 1
"	12,500	8	12,771	14	10	4.40	12,643 16 7
"	15,000	10	15,333	6	8	5.50	15,174 12 1
"	17,500	12	17,897	14	7	6.60	17,706 2 1
"	20,000	15	20,705	17	8	8.25	20,359 13 6
"	25,000	18	25,914	12	9	9.90	25,457 16 6
"	30,000	21	31,139	4	10	11.55	30,559 12 10
"	35,000	24	36,381	11	7	13.20	35,665 6 6
"	40,000	28	42,222	4	6	15.40	41,040 3 10
"	45,000	31	46,956	10	6	17.05	45,895 2 5
"	50,000	35	53,076	18	6	19.25	51,362 4 7
"	60,000	40	65,000	0	0	22.00	62,115 7 9
"	75,000	45	81,818	3	8	24.75	77,740 17 4
"	100,000	50	110,000	0	0	27.50	103,793 2 1
"	150,000	55	166,666	13	4	30.25	155,913 19 7
"	200,000	60	225,000	0	0	33.00	208,208 19 2
"	300,000	65	342,857	2	11	35.75	312,840 9 4
"	500,000	70	583,333	6	8	38.50	522,357 14 6
"	750,000	75	900,000	0	0	41.25	785,106 7 8
"	1,000,000	80	1,250,000	0	0	44.00	1,049,107 2 11

⁹⁷ These columns do not form part of the statute.

ELEVENTH SCHEDULE

PART IV

DEATH DUTY REPEALS

Session and Chapter	Short Title	Extent of Repeal
* * 57 & 58 Vict. c. 30	* * The Finance Act, 1894.	* * * Subsection (2) of section two; sub- section (5) of section five; . . . subsection (4) of section fifteen from " which " onwards; . . . paragraphs 3 and 5 of the First Schedule and in paragraph 4 of that Schedule the words " and 6 ".
* * 12 & 13 Geo. 5, c. 10.	* * The Finance Act, 1922.	* * * Section forty-four.
* * 20 & 21 Geo. 5, c. 28.	* * The Finance Act, 1930.	* * * Section forty, except as respects estate duty.
* * 26 Geo. 5 & 1 Edw. 8, c. 34.	* * The Finance Act, 1936.	* * * Section twenty-four.
* * 1 Edw. 8 & 1 Geo. 6, c. 54.	* * The Finance Act, 1937.	* * * Subsection (4) of section thirty-one.
* * 9 & 10 Geo. 6, c. 64	* * The Finance Act, 1946.	* * * In section forty-six, paragraphs (a) and (b); section forty-nine, except the words " in subsection (1) of the said section fifty-six " and the words following the last " and "; in the Tenth Schedule, Parts I and II, and Part III, paragraph 3, from " and the legacy " onwards.
* *	* *	* * *

SAVING

The repeal of any enactment by this Part of this Schedule shall not affect its operation in relation to estate duty leviable on or by reference to a death occurring before the commencement of this Act, or in relation to any legacy duty, succession duty or temporary estate duty under section six of the Customs and Inland Revenue Act, 1889, to which section twenty-three of this Act does not apply.

The Finance Act, 1950

(14 GEO. 6, c. 15)

[28 July 1950.]

PART IV

ESTATE DUTY

43.—(1) Subsections (1) and (2) of section forty-three of the Finance Act, 1940, shall be amended as provided by Part I of the Seventh Schedule to this Act, and accordingly shall have effect as set out in Part II of that Schedule with the amendments made by the Eleventh Schedule to the Finance Act, 1946, and by this subsection.

(2) Where an interest limited to cease on a death (within the meaning of the said section forty-three) has been disposed of or has determined, bona fide possession and enjoyment of the property shall not be deemed for the purposes of subsection (2) of that section to be assumed immediately thereafter and thenceforward retained to the entire exclusion of a person who had the interest and of any benefit to him by contract or otherwise, if at any time thereafter he has a benefit by virtue of any operations associated with the disposition or determination, nor while he has such a benefit shall the property be deemed to be enjoyed to the entire exclusion as aforesaid for the purposes of subsection (3) of section fifty-nine of the Finance (1909–10) Act, 1910 (which relates to the surrender of benefits reserved).

(3) In the last foregoing subsection—

- (a) the reference to any operations associated with the disposition shall be taken as referring to any associated operations as defined by section fifty-nine of the Finance Act, 1940, of which the disposition is one, and
- (b) the reference to any operations associated with the determination shall be taken as referring to any associated operations as so defined of which any disposition resulting in, or effected in contemplation of or with reference to, the determination is one.

(4) This section shall have effect in relation to any death occurring after the eighteenth day of April, nineteen hundred and fifty, whether or not the relevant interest is disposed of or determines after that date.

44.—(1) Where an interest limited to cease on a death (within the meaning of section forty-three of the Finance Act, 1940) after becoming an interest in possession is disposed of or determines wholly or partly, then, whatever the nature of the property in which the interest subsisted, the following persons shall be accountable for any estate duty payable on the death by virtue

of that section (in addition to any persons accountable therefor apart from this section), that is to say—

- (a) if the settlement under which the interest subsisted is in existence at the death, the trustees for the time being of that settlement; and
- (b) if it is not, the persons who were the last trustees of that settlement.

(2) Notwithstanding anything in the foregoing subsection or in section eight of the Finance Act, 1894, no person shall be accountable as trustee of a settlement for any estate duty payable by virtue of the said section forty-three in respect of property paid or applied to or for the benefit of a person not of full age in the exercise of any express or implied power of advancement under the settlement, where that person is not and does not become absolutely and indefeasibly entitled to any share or interest in the property comprised in the settlement, and the property so paid or applied to him or for his benefit does not exceed altogether in amount one half of his presumptive share or interest in the property so comprised.

(3) Where—

- (a) the trustees of a settlement may become accountable for estate duty payable by virtue of the said section forty-three in respect of any property; and
- (b) it is intended that the property or any part thereof shall cease to be comprised in the settlement;

then if the trustees obtain from the Commissioners a certificate of the amount which in the opinion of the Commissioners may properly be treated as the prospective amount of the duty, and give the Commissioners all the information and evidence required by the Commissioners in connection with the application for the certificate, no person shall be accountable as trustee of the settlement for the duty to which the certificate relates to an amount in excess of the amount certified.

(4) It is hereby declared that a person who may become accountable as trustee of a settlement for estate duty payable by virtue of the said section forty-three on property which is or has been comprised in the settlement has a lien for the prospective amount of the duty and the costs in respect thereof on any property in his hands which is so comprised.

(5) Where the trustees of a settlement may become accountable for estate duty payable by virtue of the said section forty-three on property which is or has been comprised in the settlement, they may refuse to execute a deed of discharge under section seventeen of the Settled Land Act, 1925, with respect to any land so comprised, or to make or concur in a conveyance of any such land to a person entitled to it as mentioned in subsection (5) of section seven of that Act, unless they are satisfied that they are effectually indemnified against their liability by

virtue of this section up to the prospective amount of the duty and the costs in respect thereof.

(6) Where land comprised in a settlement is not vested in the trustees of the settlement, but they are entitled under the last foregoing subsection to refuse to make or concur in a conveyance such as is there mentioned, they may require the person having the possession of the last or only principal vesting instrument to endorse on or annex to that instrument a memorandum that any such conveyance of land so comprised requires the concurrence of the trustees for the time being of the settlement, or, in the case of registered land, they may require the proprietor to apply for the entry on the register of a restriction to the like effect; and thereafter no such conveyance shall be made except by the trustees for the time being or with their concurrence.

(7) References in this section to the prospective amount of any duty are to be taken as referring to the prospective amount of the duty on the assumption that it will become chargeable.

(8) Subsections (1) and (2) of this section shall have effect in relation to any death occurring after the eighteenth day of April, nineteen hundred and fifty, whether or not the relevant interest is disposed of or determines after that date, so however that no person shall by virtue of the said subsection (1) be accountable as trustee of any settlement for any duty except to the extent of the property comprised in the settlement after the said eighteenth day of April; and subsection (3) of this section shall be deemed always to have had effect and to have applied with any necessary modifications to duty payable by virtue of section eleven of the Finance Act, 1900, or section thirty-nine of the Finance Act, 1930, as it applies to duty payable by virtue of section forty-three of the Finance Act, 1940.

45.—(1) Where land or chattels are so settled, whether by Act of Parliament or royal grant, that no one of the persons successively in possession thereof is capable of alienating the same, then notwithstanding anything in subsection (3) of section twenty-eight of the Finance Act, 1949 (which directs that the estate duty law shall apply to land and chattels so settled in the same way as to other settled property), on the death of a tenant in tail of the property comprised in the settlement estate duty shall not be chargeable as respects any part of that property in the case of which he has disposed of his personal interest to or for the benefit of the person who may from time to time be his successor and in the case of which the conditions of the next following subsection are satisfied.

(2) The conditions to be satisfied are—

- (a) that the disposition of the tenant in tail's personal interest was bona fide effected five years before his death;

- (b) that bona fide possession and enjoyment of the property was assumed immediately after the disposition by the tenant in tail's successor and thenceforward retained to the entire exclusion of the tenant in tail and of any benefit to him by contract or otherwise or (bona fide possession and enjoyment of the property having been so assumed) the property was enjoyed to the entire exclusion as aforesaid for the five years before the tenant in tail's death;
- (c) that there is not (by reason of any subsequent disposition of the tenant in tail's personal interest or otherwise) any change on the tenant in tail's death in the person beneficially entitled to possession of the property or the income arising therefrom :

Provided that, for the purposes of paragraph (b) of this subsection, subsection (2) of section forty-three of this Act shall apply in relation to any disposition of a tenant in tail's personal interest as it applies for the purposes of the enactments therein mentioned in relation to a disposition of an interest limited to cease on a death.

(8) For the purpose of paragraph (c) of the last foregoing subsection there shall not be deemed to be a change on a tenant in tail's death in the person beneficially entitled to the income arising from any property by reason only that a jointure or other annuity payable out of that income arises on the tenant in tail's death under the settlement comprising the property or ceases on the tenant in tail's death, but nothing in this section shall affect the duty chargeable on any property on the tenant in tail's death by reason of some other person's having or having had in that property an interest limited to cease on that death.

(4) In this section the expression "tenant in tail" means tenant in tail in possession within the meaning of the Settled Land Act, 1925, and references to a tenant in tail of any property include one of two or more tenants in tail in common or tenants in tail in coparcenery of that property; and in relation to any tenant in tail of property—

- (a) the expression "personal interest" means his right as tenant in tail to possession of the property or the income arising therefrom or a share thereof during his life; and
- (b) the expression "successor" means the person who, if the tenant in tail were dead, would be tenant in tail in his place, whether as heir under the entail or as tenant in tail in remainder.

46.—(1) In relation to a person dying after the eighteenth day of April, nineteen hundred and fifty, there shall be substituted for subsection (1) of section forty-four of the Finance Act, 1940, the following subsections :—

“(1) Any disposition made by the deceased in favour of a relative of his shall be treated for the purposes of paragraph (c) of subsection (1) of section two of the Finance Act, 1894, as a gift unless—

(a) the disposition was made on the part of the deceased for full consideration in money or money's worth paid to him for his own use or benefit; or

(b) the deceased was concerned in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only;

and references to a gift in the other enactments relating to estate duty (including this Part of this Act) shall be construed accordingly :

Provided that where the disposition was made on the part of the deceased for partial consideration in money or money's worth paid to him for his own use or benefit, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

(1A) Where the deceased made a disposition of property in favour of a relative of his, the creation or disposition in favour of the deceased of an annuity or other interest limited to cease on the death of the deceased or of any other person shall not be treated for the purposes of this section or of subsection (1) of section seven of the Finance Act, 1894, as consideration for the disposition made by the deceased.

(1B) If a company to which this section applies was concerned in a transaction in relation to which it is claimed that the provisions of paragraph (a) of or the proviso to subsection (1) of this section have effect, those provisions shall have effect in relation thereto if and only if, and to the extent only to which, the Commissioners are satisfied that those provisions would have had effect in the following circumstances, namely, if the assets of the company had been held by it on trust for the members thereof and any other person to whom it is under any liability incurred otherwise than for the purposes of the business of the company wholly and exclusively, in accordance with the rights attaching to the shares in and debentures of the company and the terms on which any such liability was incurred, and if the company had acted in the capacity of a trustee only with power to carry on the business of the company and to employ the assets of the company therein.

(1C) Any gift made in favour of a relative of the deceased by a company of which the deceased at the time of the gift had control within the meaning of subsection (3) of section fifty-five of this Act shall be treated for the purposes of paragraph (c) of subsection (1) of section two of the Finance Act, 1894, as a gift made by the deceased, and the property

taken under the gift shall be treated as included by virtue of that paragraph in the property passing on the death of the deceased, if and to the extent to which the Commissioners are satisfied that they would fall to be so treated in the circumstances mentioned in the last foregoing subsection."

(2) Where the foregoing subsection applies,—

(a) references to subsection (1A) of the said section forty-four shall be substituted—

(i) for the reference to subsection (1) of that section in subsection (5) thereof; and

(ii) for the reference to that section in subsection (1) of section forty of the Finance Act, 1944 (which allows from the value of the property chargeable by virtue of the said section forty-four a deduction for the deceased's annuity payments, but limits the deduction to the amount specified in the Third Schedule to that Act); and

(b) section forty of the Finance Act, 1944, shall have effect also as if for paragraph 2 of the Third Schedule to that Act there were substituted the following paragraph :—

"2. Where under section forty-four of the Finance Act, 1940, a deduction for partial consideration would have been allowable in respect of the annuity or other interest if subsection (1A) of that section had not applied to the disposition and if any other consideration for the disposition had not been given, the amount allowed shall not exceed the amount of that deduction".

47. In section fifty-one of the Finance Act, 1940 (which relates to the charge for estate duty under the provisions of that Act about companies, and contains provisions for preventing duplication of the charge), there shall be inserted after subsection (1) the following subsection :—

"(1A) Where the following conditions are satisfied, that is to say, that the deceased has, within five years before his death, disposed of any shares in or debentures of the company for consideration in money or money's worth paid to him for his own use or benefit, and that any benefits accrued to the deceased from the company by virtue of those shares or debentures or by virtue of a power's having been exercisable by him or with his consent in relation to those shares or debentures, then—

(a) if the value of the said consideration is equal to or greater than the proportion of the value of the company's assets that corresponds to the benefits that

so accrued to him, or if the Commissioners are satisfied that the said proportion would not, if fully ascertained, be found to be substantially in excess of the value of the said consideration, duty on the said proportion shall not be payable;

(b) in any other case, the amount on which duty is to be charged in respect of the said proportion shall be reduced by the amount of the value of the said consideration:

Provided that, in the case of any shares or debentures,—

(i) this subsection shall not apply where estate duty is payable on the death on their value or any part thereof or would be so payable but for an exemption from estate duty; and

(ii) for the purpose of determining to what extent, if any, the disposition of them satisfies the conditions of this subsection, section fifty-six of this Act (which relates to transactions through the medium of a company) shall apply as it applies for the purposes of section three of the Finance Act, 1894."

48.—(1) Subject to the next following subsection, section forty of the Finance Act, 1930 (which exempts from estate duty objects of national, scientific, historic or artistic interest), shall apply to objects which pass on a death occurring after the date of the passing of this Act only if an undertaking is given, by such person as the Treasury think appropriate in the circumstances of the case, that, until the objects again pass on a death or are sold,—

- (a) the objects will be kept permanently in the United Kingdom, and will not leave it temporarily except for a purpose and a period approved by the Treasury; and
- (b) reasonable steps will be taken for the preservation of the objects; and
- (c) reasonable facilities for examining the objects for the purpose of seeing the steps taken for their preservation, or for purposes of research, will be allowed to any person authorized by the Treasury so to examine them.

(2) If on a claim for exemption under the said section forty it is made to appear to the Treasury that any documents for which the exemption is claimed contain information which for personal or other reasons ought to be treated as confidential, the Treasury may exclude those documents either altogether or to such extent as they think fit from any undertaking under the foregoing subsection so far as the undertaking relates to the examination of the documents for purposes of research.

(3) Where any objects are exempted from estate duty in pursuance of an undertaking under subsection (1) of this section,

and the Treasury are satisfied that at any time during the period for which the undertaking was given it has not been observed in a material respect, then estate duty shall become chargeable, on the value at that time of those objects, in respect of the death on which the exemption was given and at the rate appropriate to the principal value of the estate passing on that death upon which estate duty is leviable, and with which the objects would have been aggregated if they had not been objects to which the said section forty applies; and any person who, if the objects were sold when the duty becomes chargeable, would be entitled to receive (whether for his own benefit or not) the proceeds of sale or any income arising therefrom shall be accountable for the duty.

(4) Where any objects are sold after becoming chargeable with estate duty under this section in respect of any death, the proceeds of sale shall not be chargeable with estate duty in respect of the same death under subsection (2) of the said section forty.

50.—(1) This Act may be cited as the Finance Act, 1950.

* * * * *

(5) Part IV of this Act shall be construed as one with Part I of the Finance Act, 1894.

(6) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(7) Save as otherwise expressly provided, such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

SEVENTH SCHEDULE

SECTION 43 (1) AND (2) OF THE FINANCE ACT, 1940

PART I

AMENDMENTS

1—(1) In subsection (1), immediately before paragraph (a), there shall be inserted the words “and the disposition or determination (or any of them if there are more than one) is not excepted by subsection (2) of this section, then”.

(2) In paragraph (a) and in paragraph (b) of subsection (1) for the words “apart from the disposition or determination” there shall be substituted the words “had there been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest”.

2.—(1) In subsection (2) for the words “the relevant disposition or determination” there shall be substituted the words “a disposition or determination of an interest limited to cease on the death”.

(2) In subsection (2) for the words "the preceding subsection shall not have effect" there shall be substituted the words "the disposition or determination shall be excepted by this subsection".

(3) In paragraph (a) of subsection (2) before the word "had" there shall be inserted the words "immediately before the disposition or determination".

PART II

SECTION 43 (1) AND (2) AS AMENDED

(1) Subject to the provisions of this section, where an interest limited to cease on a death has been disposed of or has determined, whether by surrender, assurance, divesting, forfeiture or in any other manner (except by the expiration of a fixed period at the expiration of which the interest was limited to cease), whether wholly or partly, and whether for value or not, after becoming an interest in possession, and the disposition or determination (or any of them if there are more than one) is not excepted by subsection (2) of this section, then—

(a) if, had there been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have passed on the death under section one of the Finance Act, 1894, that property shall be deemed by virtue of this section to be included as to the whole thereof in the property passing on the death; or

(b) if, had there been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have been deemed by virtue of paragraph (b) of subsection (1) of section two of the said Act to be included to a particular extent in the property passing on the death, the property in which the interest subsisted shall be deemed by virtue of this section to be included to that extent in the property passing on the death.

(2) Where a disposition or determination of an interest limited to cease on the death was bona fide effected or suffered five years before the death (or, if it was effected or suffered for public or charitable purposes, one year before the death), the disposition or determination shall be excepted by this subsection—

(a) If bona fide possession and enjoyment of the property in which the interest subsisted was assumed immediately thereafter by the person becoming entitled by virtue of or upon the disposition or determination and thenceforward retained to the entire exclusion of the person who immediately before the disposition or determination had the interest and of any benefit to him by contract or otherwise; or

(b) in the case of a partial determination, if the conditions specified in the preceding paragraph were not satisfied by reason only of the retention or enjoyment by the deceased of possession of some part of the property, or of some benefit, by virtue of the provisions of the instrument under which he had the interest :

Provided that nothing in this subsection shall be construed as affecting any charge of estate duty arising otherwise than by virtue of the provisions of the preceding subsection.

APPENDIX B

Statutory Rules and Orders

I. IRELAND

THE GOVERNMENT OF IRELAND (ADAPTATION OF THE TAXING ACTS) ORDER, 1922

(S.R. & O., 1922, No. 80)

PART I

General

1.—(1) This Order may be cited as the Government of Ireland (Adaptation of the Taxing Acts) Order, 1922.

(2) In this Order the expression “appointed day” means the twenty-second day of November nineteen hundred and twenty-one and the expression “transferred tax” means a tax with respect to which the Parliament of Northern Ireland has after the appointed day power to make laws.

(3) The Interpretation Act, 1889, applies to the interpretation of this Order in like manner as it applies to the interpretation of an Act of Parliament.

PART III

Death Duties Acts

12. This Part of this Order applies to the Death Duties Acts, that is to say, the Probate and Legacy Duties (Ireland) Act, 1814, the Probate Duty (Ireland) Act, 1816, the Succession Duty Act, 1853, Part III of the Customs and Inland Revenue Act, 1881, Part II of the Customs and Inland Revenue Act, 1889, and Part I of the Finance Act, 1894, and the enactments amending those Acts or otherwise relating to death duties as defined in section thirteen of the Finance Act, 1894.

14. As respects death duties leviable in Northern Ireland and the rest of the United Kingdom respectively on or with reference to deaths occurring on or after the appointed day, the Death Duties Acts shall apply subject to the following adaptations :—

(a) In those Acts, in their application to Northern Ireland—

(i) references to the chief office of the Commissioners of Inland Revenue in London shall be construed as references to the chief office of the Minister of Finance for Northern Ireland for purposes of inland revenue;

(ii) references to Dublin shall be construed as references to Belfast :

- (b) References to the United Kingdom in section four of the Revenue (No. 2) Act, 1864, in section twenty-eight and subsection (1) of section thirty-three of the Customs and Inland Revenue Act, 1881, in subsection (2) of section two, subsections (2) and (3) of section seven and subsection (3) of section twenty of the Finance Act, 1894, and section eight of the Savings Bank Act, 1920, shall, in the application of those provisions to Northern Ireland, be construed as references to Northern Ireland, and, in the application of those provisions to the rest of the United Kingdom, shall be construed as references to the United Kingdom exclusive of Northern Ireland :
- (c) Except in section thirty-eight of the Stamp Duties (Ireland) Act, 1842, references to Ireland shall in the application of the Acts to Northern Ireland be construed as references to Northern Ireland, and in their application to the rest of the United Kingdom be construed as references to Southern Ireland :
- (d) Subsection (2) of section seven of the Finance Act, 1894, shall have effect as if for the words “in the foreign country or British possession” there were substituted the words “in the country” :

* * * * *

THE IRISH FREE STATE (CONSEQUENTIAL ADAPTATION OF ENACTMENTS) ORDER, 1923

(S. R. & O., 1923, No. 405)

1. This Order may be cited as the Irish Free State (Consequential Adaptation of Enactments) Order, 1923.

2. Subject to the provisions of this Order and of any subsequent Order in Council made under section six of the Irish Free State (Consequential Provisions) Act, 1922, references in any enactment passed before the establishment of the Irish Free State to “the United Kingdom” or “the United Kingdom of Great Britain and Ireland”, or “Great Britain and Ireland” or “Great Britain or Ireland”, or “the British Islands” or “Ireland” shall, in the application of the enactment to any part of Great Britain and Ireland other than the Irish Free State, be construed as exclusive of the Irish Free State, except that in the Acts mentioned in the Schedule to this Order any such expression as aforesaid shall, to the extent specified in that Schedule, be construed as including the Irish Free State :

Provided that nothing in this Article shall—

- (a) apply to any enactment so as to affect the liability to, or the assesment or collection of, any tax or duty the liability whereto, or the assessment or collection whereof, is regulated by section two of the Irish Free State

Constitution Act, 1922, or to sections ninety-four and ninety-five of the Probates and Letters of Administration (Ireland) Act, 1857, and sections thirteen and fourteen of the Confirmation of Executors (Scotland) Act, 1858, as respectively modified by the Government of Ireland (Resealing of Probates, etc.) Order, 1922, in relation to cases where death duties payable on the death of the person to whom representation is granted are regulated by the said section two; or

- (b) apply to any enactment regulating the administration of any public service the transfer of the administration whereof to the Government of the Irish Free State is, by virtue of Article seventy-nine of the Constitution of the Irish Free State, deferred, so as to affect the administration of that service prior to the transfer; or
- (c) apply to any enactment designed for the enforcement of any international convention which is binding on the Irish Free State so as to prejudice the powers of fulfilling the obligations imposed by the convention.

3. Subject as aforesaid, references to "the United Kingdom" or "the United Kingdom of Great Britain and Ireland", or "Great Britain and Ireland", or "Great Britain or Ireland", or "the British Islands" or "Ireland", in any enactment passed before the establishment of the Irish Free State which applies to parts of His Majesty's Dominions outside the United Kingdom, or outside the British Islands, as the case may be, shall, in the application of the enactment to any such part, be construed as references both—

- (a) to Great Britain and Ireland or the British Islands exclusive of the Irish Free State, or as the case may be, to Ireland exclusive of the Irish Free State; and
- (b) to the Irish Free State.

Provided that where by any such enactment the Isle of Man and the Channel Islands are to be deemed for the purposes of the enactment to form part of the United Kingdom, they shall not for the purposes of this Article be deemed to be parts of His Majesty's Dominions outside the United Kingdom.

SCHEDULE

Session and Chapter	Short Title	Section
5 & 6 Vict. c. 82	The Stamp Duties (Ireland) Act, 1842.	Section thirty-eight.
* *	* *	* * *

II. LAND VALUES APPEALS

(a) THE LANDS TRIBUNAL RULES, 1949

(S.I. 1949, No. 2263 (L.29))

1. These Rules may be cited as the Lands Tribunal Rules, 1949, and shall come into operation on the first day of January, 1950.

2.—(1) In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say :—

“ The Act ” means the Lands Tribunal Act, 1949 ;

* * * * *

“ Tribunal ” means the member or members of the Lands Tribunal selected to deal with a case under the provisions of subsection (2) of section 3 of the Act ;

* * * * *

“ Interested person ” means, in the case of an appeal against a determination, any person at whose instance an appeal against the determination will lie under the enactment conferring a right of appeal, . . .

* * * * *

(2) A Form referred to by number means the Form so numbered in the First Schedule to these Rules.

(3) The Interpretation Act, 1889, shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

3.—(1) An appeal against a determination may be instituted by sending to the registrar in duplicate a written notice of appeal.

* * * * *

(3) In the case of an appeal against any determination by the Commissioners of Inland Revenue in respect of which, but for the provisions of the Act, there would be a right of appeal to one of the panel of referees appointed under Part I of the Finance (1909–10) Act, 1910 (including an appeal against a decision of the Commissioners under section 60 of that Act) the notice of appeal shall be substantially in accordance with Form 2.

* * * * *

(4) . . . The President may, if he thinks fit, prescribe forms of notice of appeal for use in connection with appeals to which this paragraph applies, . . .

4. A notice of appeal shall not be valid unless it is given by an interested party and is sent to the registrar within 30 days

from the date on which notice of determination was served upon the appellant, or within such other time as may be prescribed by the Order in Council by virtue of which an appeal against the determination lies to the Lands Tribunal.

5.—(1) Upon receiving notice of appeal, the registrar shall enter particulars of the appeal in the Register of Appeals against Determinations and shall forthwith send the duplicate notice to the determining authority and shall inform the appellant and the determining authority of the number of the appeal entered in the register, which shall thereafter constitute the title of the appeal.

(2) Upon receiving the duplicate notice of appeal the determining authority shall forthwith send to the registrar a copy of the determination referred to therein.

6.—(1) Subject to any directions which may be given by the President, the registrar may, at any time after receiving a valid notice of appeal, require an appellant to furnish a statement setting out further and better particulars of the grounds of appeal and any facts and contentions relevant thereto.

(2) The appellant shall, within such time as may be prescribed by the registrar, not being less than 14 days after the date of the requirement, send the statement to the registrar in duplicate and shall send copies thereof to such other appellant, if any, being an appellant who has given notice of appeal against the same determination, as the registrar may direct.

* * * * *

44. The time appointed by or under these Rules for doing any act or taking any steps in connection with any proceedings (not being the time appointed for appealing against a determination by the Central Land Board . . . or against the decision of a local valuation court) may be extended, on an application to the registrar in accordance with the provisions of Rule 22, upon such terms (if any) as the justice of the case may require, and any such extension may be ordered although the application is not made until after the expiration of the time appointed.

* * * * *

54. The Rules specified in the Fourth Schedule to these Rules (except in so far as they relate to Scotland or Northern Ireland) are hereby revoked as from the date on which these Rules come into operation.

* * * * *

FIRST SCHEDULE

* * * * *

FORM 2

LANDS TRIBUNAL ACT, 1949

NOTICE OF APPEAL AGAINST DETERMINATION BY COMMISSIONERS OF INLAND
REVENUE UNDER FINANCE (1909-10) ACT, 1910

To: The Registrar,
Lands Tribunal,
24 Abingdon Street,
London, S.W.1.

Description of land To be copied from
Inland Revenue reference number Inland Revenue's
Date of determination determination.

I/we Here state
of usual address.
hereby give notice of appeal against [*here insert par-*
ticulars of the matter appealed against, e.g., "the
assessment of mineral rights duty under Part I of the
Finance (1909-10) Act, 1910", or "the refusal of
the Commissioners of Inland Revenue to make an allow-
ance in respect of . . . " or "the determination of the
Commissioners of Inland Revenue that . . . "].

The grounds of appeal are that Here state briefly
the grounds of
the appeal.

I/we claim that the amount of the duty [*or, the value*
of the said property] should be £..... Strike out if not
applicable.

I/we do/do not propose to call an expert witness to
give evidence in support of the valuations on which
I/we shall rely at the hearing of the appeal. Strike out words
not applicable.

All communications regarding the appeal should be
addressed to me/us at the address shown above [*or, to*
my/our solicitor/agent Mr. Strike out words
not applicable.
of

* * * * *

FOURTH SCHEDULE

THE LAND VALUES (REFEREE) RULES, 1910
(S. R. & O., 1910 (No. 1339) p. 398)

(b) SCOTLAND

THE LAND VALUES (REFEREE) (SCOTLAND) RULES, 1911

(S.R. & O., 1911, No. 433 (s. 44), *as amended by Additional*
Rules dated July 10, 1912, and July 31, 1913)

1. These rules may be cited as the Land Values (Referee)
(Scotland) Rules, 1911.

2.—(1) In these rules, unless the context otherwise requires,—

“The Act” means the Finance (1909–10) Act, 1910.

“The Commissioners” means the Commissioners of Inland Revenue.

(2) The Interpretation Act, 1889, applies for the purpose of the interpretation of these rules as it applies for the purpose of the interpretation of an Act of Parliament.

3.—(1) An appeal to a referee under the Act may be made by sending to the Reference Committee, Parliament House, Edinburgh, and to the Commissioners, Waterloo Place, Edinburgh, within the time prescribed by these rules, a written notice of appeal showing the matter to which the appeal relates and giving particulars of the grounds of the appeal.

(2) The notice of appeal shall be in the form set out in the Schedule to these rules, or in a form to the like effect.

(3) The Commissioners shall cause printed forms of notice of appeal to be furnished gratis to any person who desires to appeal and applies for a form either to them or to a district valuer, or to any other person authorised by the Commissioners to furnish the forms.

4. The following provisions shall have effect as respects the time of giving notice of appeal :—

(1) . . .

(2) In the case of an appeal against any assessment of duty, or against any refusal of the Commissioners to make any allowance or to make the allowance claimed, or against any apportionment, or against the determination of any other matter by the Commissioners, notice of appeal must be given within thirty days after the Commissioners have given notice to the appellant of their assessment, refusal, apportionment, or determination, as the case may be.

5.—(1) The Reference Committee may, on the application of any person desiring to appeal, extend the time for appeal prescribed by the foregoing rule as they, in their absolute discretion, think fit, and may so extend the time although the application is not made until after the expiration of the time prescribed.

(2) Any application for an extension of the time for appeal must be made in writing to the Reference Committee, and must state the grounds of the application, and a copy of the application must be sent to the Commissioners by the applicant.

(3) The Reference Committee shall give the Commissioners reasonable opportunity for laying before them in writing any objections which the Commissioners may have to any such application for an extension of time, and shall consider any such objections.

6. The referee to whom an appeal is to be referred shall be selected by the Reference Committee, and the Reference

Committee shall, as soon as they have selected the referee, inform the Commissioners and the appellant of the name and the address of the referee selected.

6A. If the Commissioners are of opinion that the appeal as lodged is incompetent or irrelevant, and that it ought not to be referred to a referee, they shall give notice of the same to the appellant, and to the Reference Committee within thirty days of the receipt of the notice of appeal: and the appeal shall then stand referred to the Valuation Court which shall dispose of the question of incompetency or irrelevancy as the case may be, and either dismiss the appeal or send it back to the Reference Committee for reference to a referee: Provided always that it shall be lawful for the said Court, if they think fit, and either with or without a finding of expenses as they shall determine, to allow the appellant to amend his appeal.

7.—(1) The referee selected shall, as soon as may be, proceed with the determination of the appeal, and arrange with the Commissioners and the appellant the time and place for consultation with the Commissioners and the appellant with respect thereto.

(2) The Reference Committee shall furnish the referee with a copy of the notice of appeal, and the Commissioners and the appellant shall furnish to the referee on his request any document or other information which it is in their or his power to furnish, and which the referee may require for the purpose of the determination of the appeal.

(3) Subject to the provisions of the Act and of these rules, the proceedings on the consideration of an appeal shall be such as the referee, subject to any special directions of the Reference Committee, may in his discretion direct.

(4) In this Rule any reference to the Commissioners or to the appellant includes a reference to any person nominated by the Commissioners or the appellant respectively under subsection (3) of section 33 of the Act.

8. The appellant shall not, on the consideration of his appeal, be allowed to rely upon any grounds of appeal not specifically set out in his notice of appeal, but the referee may, if he thinks it just under the circumstances, allow the notice of appeal to be amended at any time.

9. The decision of the referee shall be in the form contained in the Schedule to these rules, or in a form to the like effect, and the referee shall cause copies of his decision to be furnished to the Reference Committee, the Commissioners, and the appellant. The referee shall have power to award expenses, and to remit them for taxation to the auditor of the Sheriff Court of the Sheriffdom wherein the subjects valued lie, or to the auditor of the Court of Session, as he shall think fit.

10. In the event of a question of law being raised by any

party to the appeal, the referee may, if he thinks fit, state his award in the form of a Special Case, for the opinion of the Valuation Court. The Valuation Court, on consideration of said case, may either determine the same, or remit to the referee for any finding in fact which they may think necessary for the just determination of the case.

11. The Reference Committee may, in the case of the death or incapacity of the referee originally selected, or if it is shown to the Committee that it is expedient so to do, in any other case, at any time before the decision of an appeal by a referee, revoke the reference of the appeal to the selected referee, and select another referee for the purpose of determining the appeal.

When after the commencement of the Finance (1909-10) Act, 1910, a referee has pronounced any findings or orders, and then died, the Reference Committee shall have power to appoint another referee to proceed with and finish the reference including all questions of expenses, and such referee shall have all the powers which the former referee, if he had lived, would have possessed.

12.—(1) On the consideration of any appeal, the referee shall, on the application of any person who appears to the referee to be interested in the land in respect of which the appeal is made, or to be otherwise interested in the matter of the appeal, give him an opportunity of putting his case before the referee in writing, and, if necessary, of taking part in any consultation with reference to the appeal.

(2) . . .

13. The Commissioners shall as soon as may be on receiving notice of the decision of the referee on any appeal make such alterations in the particulars of any valuations, apportionments, reapportionments, assessments, or other documents as may be necessary to carry out the decision of the referee: Provided always that such alterations shall not be made till the expiry of the time limited for appeal against the decision of a referee to the Valuation Court; and if such appeal is taken, the alterations shall be in accordance with the decision of the Valuation Court as soon as that is given.

14. Any notice or other document required or authorised to be sent to any person for the purpose of these rules shall be deemed to be duly sent if sent by post addressed to that person at his ordinary address, and the ordinary address of the Reference Committee shall for this purpose be deemed to be the Parliament House, Edinburgh.

15. Any failure on the part of any authority or any person to comply with the provisions of these rules shall not render the proceedings on a reference to a referee, or anything done in pursuance thereof, invalid, unless the referee so direct.

SCHEDULE

I.—FORMS OF NOTICE OF APPEAL

* * * * *

B

FINANCE (1909-10) ACT, 1910

NOTICE OF APPEAL TO REFEREE IN RESPECT OF ANY MATTER OTHER THAN
TOTAL OR SITE VALUE ON A PROVISIONAL VALUATION

County Parish No. of Property
To the Reference Committee.

[Or, To the Commissioners of Inland Revenue.]

I hereby give notice of my intention to appeal against *

The particulars of my grounds of appeal are as follows:—

† Signed.....

Address.....

Dated

- * Here insert the matter appealed against, *e.g.*, "The assessment of duty under Part I of the Finance Act," "The refusal of the Commissioners to make an allowance in respect of," etc., etc., or "The determination by the Commissioners in respect of the following matter, namely"—
- † If an agent, the name and address of the principal on whose behalf he acts must be stated.

II.—FORM OF DECISION OF REFEREE

FINANCE (1909-10) ACT, 1910

DECISION OF REFEREE ON APPEAL

The decision on the appeal in respect of which the annexed notice of appeal has been given is as follows * :—

Signed.....

Referee.

Dated

- * If the notice of appeal is in Form A, the decision should be stated by reference to the items complained of in the particulars of the grounds of appeal. Any variations in those items, with the consequential alterations of the totals, should be stated.
- If the notice of appeal is in Form B, the decision should follow as far as possible the form of the notice of appeal.

III. RULES OF COURT

(i) *Appeals under the Finance Act, 1894, s. 10 (England)*

THE RULES OF THE SUPREME COURT (FINANCE ACT), 1895

(S.R. & O., 1895, No. 11 (L.1))

1. Any aggrieved person within the meaning of section 10 (1), of the Finance Act, 1894, who desires to appeal to the High Court in any of the cases mentioned in the said subsection shall, within one month from the date of the notification to him or his

solicitor of the decision or claim of the Commissioners, deliver to them a written statement of the grounds of such appeal.

The statement shall state specifically the several grounds upon which the appellant contends that the decision or claim of the Commissioners was erroneous, and if he contends that the value put upon any property by the Commissioners is excessive, he shall therein identify such property and state the value which he contends should be put upon the same.

2. The Commissioners shall, within a month from the delivery to them of the statement of the grounds of appeal, notify to the appellant or his solicitor whether they have withdrawn the decision or claim appealed against or have determined to maintain the same, either in whole or in part.

3. At any time thereafter not exceeding one month from the date of the notification by the Commissioners of their determination to maintain their decision or claim either in whole or in part, the appellant may proceed with his appeal by way of petition to the High Court, such petition to be filed in the Queen's Remembrancer's Department of the Central Office, and a copy thereof served by the appellant upon the Commissioners.

4. Subject to the provisions of these Rules the appellant shall not in his petition state or at the hearing be allowed to rely upon any grounds of appeal not specifically set forth in the statement of the grounds of appeal.

5. Upon the filing of the petition and the service of a copy thereof upon the Commissioners, the matter shall be deemed to be completely at issue, and within seven days thereafter the appellant, or in default thereof the Commissioners, may set the petition down for hearing upon the revenue side of the Queen's Bench Division of the High Court.

6. The Court or a Judge may order that the petition shall be heard before a Judge of the Chancery Division, and Order XLIX, Rule 7, shall apply to any such order.

7. Unless by consent, or otherwise ordered, only oral evidence shall be admitted at the hearing.

8. In cases where pursuant to Rule 7 evidence may be by affidavit, the affidavits shall be filed in the Queen's Remembrancer's Department.

9. The Crown shall have the same right as an ordinary suitor of administering interrogatories and of obtaining discovery and inspection of documents.

10. The Court or a Judge may, at any time before or at the hearing, allow the appellant to amend his petition upon such terms as the Court or Judge may think right.

11. Order XIX, Rule 27, of the Rules of the Supreme Court, 1883, shall apply to the petition which shall be deemed to be a pleading within that rule.

12. Applications for leave to bring an appeal without payment, or on part payment only of the duty, under the provisions of the 4th subsection of the 10th section of the Finance Act, 1894, shall be by summons before a Judge at Chambers, and the appellant shall deliver to the Commissioners, with the summons, a copy of any affidavit which the appellant intends to use at the hearing of the summons.

13. These Rules may be cited as the Rules of the Supreme Court (Finance Act), 1895, and shall come into operation forthwith.

(ii) *Apportionment of Estate duty under the Finance Act, 1894, s. 14 (England)*

THE RULES OF THE SUPREME COURT (NOVEMBER) 1895

(S.R. & O., 1895, No. 603 (L. 35))

ORDER LV. RULE 9C

3.—(1) An application under section 14 (2) of the Finance Act, 1894, for the determination of a dispute as to the proportion of estate duty to be borne by any property or person shall be made by originating summons in the Chancery Division.

(2) Such summons shall be intituled in the matter of the estate of the person upon whose decease the estate duty has been paid or claimed, and in the matter of the Finance Act, 1894, and shall in other respects be in the form prescribed by Order LIV, Rule 4B, and by Appendix K., No. 1A.

4. These Rules may be cited as the Rules of the Supreme Court (November) 1895, or each Rule may be cited by the heading thereof with reference to the Rules of the Supreme Court, 1883. They shall come into operation on February 1, 1896.

(iii) *Appeals under the Finance Act, 1894, s. 10 (Scotland)*

RULES OF COURT ENACTED BY ACT OF SEDERUNT OF THE LORDS
OF COUNCIL AND SESSION DATED JULY 1, 1948

(S.I. 1948, No. 1691 (S. 149))

CHAPTER V

Section 6

297. APPEALS UNDER THE FINANCE ACT, 1894, *section 10.*

(a) *Preliminary procedure.*—The appellant shall, within one month from the date of the notification to him or his solicitor of the decision or claim of the commissioners, deliver to them a written appeal containing a statement of the grounds of such appeal. The statement shall specify explicitly the several

grounds upon which the appellant contends that the decision or claim of the commissioners is erroneous; and, if he contends that the value put upon any property by the commissioners is excessive, he shall therein identify such property, and state the value which he contends should be put upon the same.

(b) *Notice by commissioners of withdrawal of decision.*—The commissioners shall, within one month from the delivery to them of the said written appeal, notify the appellant or his solicitor whether they have withdrawn the decision or claim appealed against, or have determined to maintain the same, either in whole or in part.

(c) *Methods of appeal.*—The appellant may, within one month from the date of the notification by the commissioners of their determination to maintain their decision or claim either in whole or in part, or (in the event of an application being made under paragraph (e) of this Rule) within ten days from the date of the interlocutor disposing of such application, proceed either (i) by lodging his appeal in the General Department for disposal in the Inner House; or (ii), where the value as alleged by the commissioners of the property in respect of which the dispute arises does not exceed £10,000, by presenting a petition in the sheriff court for the county within which the appellant resides or the property is situated. The provisions of Rules 286 to 289 of this Chapter shall apply in the case of an appeal to the Court of Session. In the case of a petition in a sheriff court, the sheriff shall order the petition to be served on the commissioners or on the Solicitor of Inland Revenue for Scotland on their behalf, and may, if he thinks fit, appoint answers to such petition to be lodged, or parties to be heard thereon with or without answers, and may thereafter give decree granting or refusing the prayer of the petition, or may take such other course with regard thereto as to him may seem proper.

(d) *Statements in appeal or petition.*—The appellant shall not in his appeal as lodged, or in his petition, state any grounds of appeal not specifically set forth in the statement of the grounds of appeal delivered by him, along with the appeal, to the commissioners: provided always, that the Court or sheriff (as the case may be) may at any time, before or at the hearing, allow the appellant to amend his appeal or petition upon such terms as the Court or sheriff may think right.

(e) *Leave to appeal without paying duty.*—Where the appellant desires to apply for leave to bring an appeal without payment, or on part payment only, of the duty (under the provisions of the subsection (4) of section 10 of the Act) he shall, within fourteen days from the date of the notification given by the commissioners, in terms of paragraph (c) of this rule, present a note to the Court in one or other Division thereof or the sheriff

(as the case may be) craving for such leave, and shall specify therein the grounds on which his application is made, and the Court or the sheriff shall dispose of such note summarily; provided always that the prayer thereof shall not be granted without giving the commissioners an opportunity of being heard upon it.

(f) *Abandonment of appeal*.—If the appellant shall not proceed with his appeal as provided in paragraph (e) of this rule, he shall be held to have abandoned the same, and shall not be entitled to proceed thereafter with it.

(g) *Procedure in Court of Session and in any sheriff court*.—Except in so far as inconsistent with the provisions of this rule, or of the said Act, the Exchequer Court (Scotland) Act, 1856, shall apply to all such appeals originating in the Court of Session; and the Sheriff Court (Scotland) Acts, 1907 to 1939, shall apply to all such petitions originating in any sheriff court.

(iv) APPEALS FROM THE DECISIONS OF REFEREES UNDER THE
FINANCE (1909–10) ACT, 1910 (1948)

CHAPTER VI

Section 2

337. CONSTITUTION OF COURT.

The Judges of the Court of Session named for the purpose of hearing appeals under the Valuation of Lands (Scotland) Acts, when they sit to hear appeals under section 33 of the Finance (1909–10) Act, 1910, in this section called “the Act”, shall sit with the same powers and under the same Rules as if they were appointed to sit as an Extra Division of the Inner House to hear and dispose of such appeals: Provided always, that in appeals from the sheriff under said Act it shall not be necessary for the Court to specify in any interlocutor any findings of fact or in law upon which the judgment of the Court is founded.

338. TIME FOR APPEAL.

Applications to a referee to state and sign a case under the Act shall be made within twenty-one days after the receipt by the appellant of the referee’s determination, and such application shall set forth the question (or questions) of law on which the opinion of the said Judges is sought.

339. PROCEDURE IN APPEAL.

(a) Any case stated under the Act shall refer to the particular statute under which it is presented and shall state in articulate numbered paragraphs the facts and circumstances out of which

the case arises, as the same may be agreed, found or referred (as the case may be) and shall set forth the question (or questions) for answer by the Court. The form of the case shall, as nearly as may be, be as shown in Form 31.

(b) The party who has obtained a case shall within seven days after the receipt thereof transmit the same to the Deputy Principal Clerk of the General Department and at the same time transmit a copy thereof to the opposite party or his solicitor. Within fourteen days after the case has been transmitted, the party obtaining same shall lodge in the General Department the said case, along with a process and copies of reproductions for the use of the Court in terms of Rules 23 and 29 (ii), and shall at the same time intimate the lodging of the case to the opposite party or his solicitor and deliver to him at least ten copies thereof.

340. ROLLS.

All such appeals shall be published in the printed rolls of the Court of Session under the heading "Valuation Appeal Court" provided always that the single bills of the Court shall be called before one of said Judges sitting alone, with power always to him to refer any matter to a sitting of the full Court.

* * * * *

343. PAYMENT OF DUTY.

Subject to the provisions of sub-section (4) of section 10 of the Finance Act, 1894, the appellant shall not be entitled to appeal against the decision of the referee except on payment of, or giving security for, the duty claimed by the Commissioners, or such portion of it as is then payable by him.

344. LEAVE FOR APPEAL WITHOUT PAYMENT.

Where the appellant desires to apply for leave to bring an appeal without payment, or on part payment only of the duty under the provisions of sub-section (4) of section 10 of the Finance Act, 1894, he shall, within fourteen days from the date of the decision of the referee, present a note to the Court craving such leave, and shall specify therein the grounds on which his application is made, and such note shall be disposed of summarily: Provided always that the prayer thereof shall not be granted without giving the Commissioners an opportunity of being heard.

IV. RELIEF FROM DOUBLE TAXATION

(a) IRELAND

THE RELIEF IN RESPECT OF DOUBLE TAXATION [IRISH FREE STATE]
DECLARATION, 1923

(S.R. & O., 1923, No. 406)

SCHEDULE

ARRANGEMENTS FOR RELIEF IN RESPECT OF DOUBLE TAXATION

PART II

Estate Duty

(a) Where the Commissioners of Inland Revenue are satisfied that Estate Duty is payable in the Irish Free State by reason of a death of a person dying on or after the first day of April, nineteen hundred and twenty-three in respect of any property situate in the Irish Free State and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the Estate Duty payable in Great Britain in respect of that property on the same death.

(b) Where the Revenue Commissioners of the Irish Free State are satisfied that Estate Duty is payable in Great Britain by reason of a death of a person dying on or after the said first day of April in respect of any property situate in Great Britain and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the Estate Duty payable in the Irish Free State in respect of that property on the same death.

(c) Any question as to whether any property is to be treated for the purposes of this arrangement as situated in Great Britain or in the Irish Free State shall be determined according to the laws in force in England and Ireland on the sixth day of December nineteen hundred and twenty-two.

(d) This arrangement shall apply as between Northern Ireland and the Irish Free State in like manner as it applies as between Great Britain and the Irish Free State until the Government of Northern Ireland signify that they have withdrawn their consent to such application.

(b) UNITED STATES OF AMERICA

THE DOUBLE TAXATION RELIEF (ESTATE DUTY) (U.S.A.)
ORDER, 1946

(S.R. & O., 1946, No. 1351)

1. This Order may be cited as the Double Taxation Relief (Estate Duty) (U.S.A.) Order, 1946.

2. It is hereby declared—

(a) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of the United States of America with

a view to affording relief from double taxation in relation to estate duty payable under the laws of the United Kingdom and duty of a similar character imposed under the laws of the United States of America; and

- (b) that it is expedient that those arrangements should have effect.

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON THE ESTATES OF DECEASED PERSONS.

The Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the United States of America,

Desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on the estates of deceased persons,

have appointed for that purpose as their respective Plenipotentiaries:

The Government of the United Kingdom of Great Britain and Northern Ireland:

The Right Honourable the Earl of Halifax, K.G., Ambassador Extraordinary in Washington; and

The Government of the United States of America:

Mr. Edward R. Stettinius, Jr., Secretary of State;

Who, having exhibited their respective full powers, found in good and due form, have agreed as follows:—

ARTICLE I

- (1) The taxes which are the subject of the present Convention are:—
- (a) In the United States of America, the Federal estate tax, and
 - (b) In the United Kingdom of Great Britain and Northern Ireland, the estate duty imposed in Great Britain.

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed by either Contracting Party subsequently to the date of signature of the present Convention or by the Government of any territory to which the present Convention applies under Article VIII or IX.

ARTICLE II

- (1) In the present Convention, unless the context otherwise requires—
- (a) The term “United States” means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and of Hawaii, and the District of Columbia.
 - (b) The term “Great Britain” means England, Wales and Scotland, and does not include the Channel Islands or the Isle of Man.
 - (c) The term “territory” when used in relation to one or the other Contracting Party means the United States or Great Britain, as the context requires.

(d) The term "tax" means the estate duty imposed in Great Britain or the United States Federal estate tax, as the context requires.

(2) In the application of the provisions of the present Convention by one of the Contracting Parties, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Party relating to the taxes which are the subject of the present Convention.

ARTICLE III

(1) For the purposes of the present Convention, the question whether a decedent was domiciled in any part of the territory of one of the Contracting Parties at the time of his death shall be determined in accordance with the law in force in that territory.

(2) Where a person dies domiciled in any part of the territory of one Contracting Party, the situs of any of the following rights or interests, legal or equitable, which for the purposes of tax form part of the estate of such person or pass on his death, shall, for the purposes of the imposition of tax and for the purposes of the credit to be allowed under Article V, be determined exclusively in accordance with the following rules, but in cases not within such rules the situs of such rights and interests shall be determined for those purposes in accordance with the law relating to tax in force in the territory of the other Contracting Party:—

- (a) Rights or interests (otherwise than by way of security) in or over immovable property shall be deemed to be situated at the place where such property is located;
- (b) Rights or interests (otherwise than by way of security) in or over tangible movable property, other than such property for which specific provision is hereinafter made, and in or over bank or currency notes, other forms of currency recognised as legal tender in the place of issue, negotiable bills of exchange and negotiable promissory notes, shall be deemed to be situated at the place where such property, notes, currency or documents are located at the time of death, or, if *in transitu*, at the place of destination;
- (c) Debts, secured or unsecured, other than the forms of indebtedness for which specific provision is made herein, shall be deemed to be situated at the place where the decedent was domiciled at the time of death;
- (d) Shares or stock in a corporation other than a municipal or governmental corporation (including shares or stock held by a nominee where the beneficial ownership is evidenced by scrip certificates or otherwise) shall be deemed to be situated at the place in or under the laws of which such corporation was created or organised;
- (e) Monies payable under a policy of assurance or insurance on the life of the decedent shall be deemed to be situated at the place where the decedent was domiciled at the time of death;
- (f) Ships and aircraft and shares thereof shall be deemed to be situated at the place of registration or documentation of the ship or aircraft;
- (g) Goodwill as a trade, business or professional asset shall be deemed to be situated at the place where the trade, business or profession to which it pertains is carried on;
- (h) Patents, trade marks and designs shall be deemed to be situated at the place where they are registered;

- (i) Copyright, franchises, and rights or licences to use any copyrighted material, patent, trade mark or design shall be deemed to be situated at the place where the rights arising therefrom are exercisable;
- (j) Right or causes of action *ex delicto* surviving for the benefit of an estate of a decedent shall be deemed to be situated at the place where such rights or causes of action arose;
- (k) Judgment debts shall be deemed to be situated at the place where the judgment is recorded;

Provided that if, apart from this paragraph, tax would be imposed by one Contracting Party on any property which is situated in its territory and passes under a disposition not governed by its law, this paragraph shall not apply to such property unless, by reason of its application or otherwise, tax is imposed or would but for some specific exemption be imposed thereon by the other Contracting Party.

ARTICLE IV

(1) In determining the amount on which tax is to be computed, permitted deductions shall be allowed in accordance with the law in force in the territory in which the tax is imposed.

(2) Where tax is imposed by one Contracting Party on the death of a person who at the time of his death was not domiciled in any part of the territory of that Contracting Party but was domiciled in some part of the territory of the other Contracting Party, no account shall be taken in determining the amount or rate of such tax of property situated outside the former territory: Provided that this paragraph shall not apply as respects tax imposed—

- (a) in the United States in the case of a United States citizen dying domiciled in any part of Great Britain; or
- (b) in Great Britain in the case of property passing under a disposition governed by the law of Great Britain.

ARTICLE V

(1) Where one Contracting Party imposes tax by reason of a decedent's being domiciled in some part of its territory or being its national, that Party shall allow against so much of its tax (as otherwise computed) as is attributable to property situated in the territory of the other Contracting Party, a credit (not exceeding the amount of the tax so attributable) equal to so much of the tax imposed in the territory of such other Party as is attributable to such property; but this paragraph shall not apply as respects any such property as is mentioned in paragraph (2) of this Article.

(2) Where each Contracting Party imposes tax by reason of a decedent's being domiciled in some part of its territory, each Party shall allow against so much of its tax (as otherwise computed) as is attributable to property which is situated, or is deemed under paragraph (2) of Article III to be situated,

- (a) in the territory of both Parties, or
- (b) outside both territories,

a credit which bears the same proportion to the amount of its tax so attributable or to the amount of the other Party's tax attributable to the same property, whichever is the less, as the former amount bears to the sum of both amounts.

(3) For the purposes of this Article, the amount of the tax of a Contracting Party attributable to any property shall be ascertained after taking

into account any credit, allowance or relief, or any remission or reduction of tax, otherwise than in respect of tax payable in the territory of the other Contracting Party or in any other country; and if, in respect of property situated outside the territories of both Parties, a Contracting Party allows against its tax a credit for tax payable in the country where the property is situated, that credit shall be taken into account in ascertaining, for the purposes of paragraph (2) of this Article, the amount of the tax of that Party attributable to the property.

ARTICLE VI

(1) Any claim for a credit or for a refund of tax founded on the provisions of the present Convention shall be made within six years from the date of the death of the decedent in respect of whose estate the claim is made, or, in the case of a reversionary interest where payment of tax is deferred until on or after the date on which the interest falls into possession, within six years from that date.

(2) Any such refund shall be made without payment of interest on the amount so refunded.

ARTICLE VII

(1) The taxation authorities of the Contracting Parties shall exchange such information (being information available under the respective taxation laws of the Contracting Parties) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this Article, the term "taxation authorities" means, in the case of the United States, the Commissioner of Internal Revenue or his authorised representative; in the case of Great Britain, the Commissioners of Inland Revenue or their authorised representative; and, in the case of any territory to which the present Convention is extended under Article VIII, the competent authority for the administration in such territory of the taxes to which the present Convention applies.

ARTICLE VIII

(1) Either of the Contracting Parties may, on the coming into force of the present Convention or at any time thereafter while it continues in force, by a written notification of extension given to the other Contracting Party through diplomatic channels, declare its desire that the operation of the present Convention shall extend to all or any of its colonies, overseas territories, protectorates, or territories in respect of which it exercises a mandate, which impose taxes substantially similar in character to those which are the subject of the present Convention. The present Convention shall apply to the territory or territories named in such notification as to the estates of persons dying on or after the date or dates specified in the notification (not being less than sixty days from the date of the notification), or, if no date is specified in respect of any such territory, on or after the sixtieth day after the date of such notification,

unless, prior to the date on which the Convention would otherwise become applicable to a particular territory, the Contracting Party to whom notification is given shall have informed the other Contracting Party in writing through diplomatic channels that it does not accept such notification as to that territory. In the absence of such extension, the present Convention shall not apply to any such territory.

(2) At any time after the expiration of one year from the entry into force of an extension under paragraph (1) of this Article, either of the Contracting Parties may, by written notice of termination given to the other Contracting Party through diplomatic channels, terminate the application of the present Convention to any territory to which it has been extended under paragraph (1), and in such event the present Convention shall cease to apply, as to the estates of persons dying on or after the date or dates (not being earlier than the sixtieth day after the date of such notice) specified in such notice, or, if no date is specified, on or after the sixtieth day after the date of such notice, to the territory or territories named therein, but without affecting its continued application to the United States, Great Britain or to any other territory to which it has been extended under paragraph (1) hereof.

(3) In the application of the present Convention in relation to any territory to which it is extended by the United Kingdom or the United States, references to "Great Britain" or, as the case may be, "United States", or to the territory of one (or of the other) Contracting Party, shall be construed as references to that territory.

(4) The provisions of the preceding paragraphs of this Article shall apply to the Channel Islands and the Isle of Man as if they were colonies of the United Kingdom.

ARTICLE IX

The present Convention shall apply in relation to the estate duty imposed in Northern Ireland as it applies in relation to the estate duty imposed in Great Britain, but shall be separately terminable in respect of Northern Ireland by the same procedure as is laid down in paragraph (2) of Article VIII.

ARTICLE X

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

(2) The present Convention shall come into force on the date of exchange of ratifications² and shall be effective only as to—

(a) the estates of persons dying on or after such date; and

(b) the estate of any person dying before such date and after the 31st day of December, 1944, whose personal representative elects, in such manner as may be prescribed, that the provisions of the present Convention shall be applied to such estate.

ARTICLE XI

(1) The present Convention shall remain in force for not less than three years after the date of its coming into force.

(2) If not less than six months before the expiration of such period of three years, neither of the Contracting Parties shall have given to the other

² Ratifications were exchanged on July 25, 1946.

Contracting Party, through diplomatic channels, written notice of its intention to terminate the present Convention, the Convention shall remain in force after such period of three years until either of the Contracting Parties shall have given written notice of such intention, in which event the present Convention shall not be effective as to the estates of persons dying on or after the date (not being earlier than the sixtieth day after the date of such notice) specified in such notice, or, if no date is specified, on or after the sixtieth day after the date of such notice.

(c) CANADA

THE DOUBLE TAXATION RELIEF (ESTATE DUTY) (CANADA)
ORDER, 1946

(S.R. & O., 1946, No. 1884)

1. This Order may be cited as the Double Taxation Relief (Estate Duty) (Canada) Order, 1946.

2. It is hereby declared—

- (a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of Canada with a view to affording relief from double taxation in relation to estate duty payable under the laws of the United Kingdom and duty of a similar character imposed under the laws of Canada; and
- (b) that it is expedient that those arrangements should have effect.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE GOVERNMENT OF CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO DUTIES ON THE ESTATES OF DECEASED PERSONS.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada, desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to duties on the estates of deceased persons, have agreed as follows:—

ARTICLE I

(1) The duties which are the subject of the present agreement are:—

(a) In the United Kingdom, the estate duty imposed in Great Britain, and

(b) In Canada, the succession duty imposed by Canada.

(2) The present Agreement shall also apply to any other duties of a substantially similar character imposed by either Contracting Government subsequent to the date of signature of the present Agreement or by the Government of any territory to which the present Agreement is extended under Article VIII or applies under Article IX.

ARTICLE II

(1) In the present Agreement, unless the context otherwise requires—

- (a) The term “United Kingdom” means Great Britain and Northern Ireland.
- (b) The term “Great Britain” means England, Wales and Scotland, and does not include the Channel Islands or the Isle of Man.
- (c) The term “territory” when used in relation to one or the other Contracting Government means Great Britain or Canada, as the context requires.
- (d) The term “duty” means the estate duty imposed in Great Britain or the succession duty imposed by Canada, as the context requires.

(2) In the application of the provisions of the present Agreement by one of the Contracting Governments, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Government relating to the duties which are the subject of the present Agreement.

ARTICLE III

Where a person dies domiciled in any part of the territory of one Contracting Government, the situs of any of the following rights or interests, legal or equitable, which for the purposes of duty form or are deemed to form part of the estate of such person or pass or are deemed to pass on his death, shall, for the purposes of the imposition of duty and for the purposes of the credit to be allowed under Article V, be determined exclusively in accordance with the following rules, but in cases not within such rules the situs of such rights or interests shall be determined for these purposes in accordance with the laws in force in the territory of the other Contracting Government:—

- (a) Rights or interests (otherwise than by way of security) in or over immovable property shall be deemed to be situated at the place where such property is located;
- (b) Rights or interests (otherwise than by way of security) in or over tangible movable property, other than such property for which specific provision is hereinafter made, and in or over bank or currency notes, other forms of currency recognised as legal tender in the place of issue, negotiable bills of exchange and negotiable promissory notes, shall be deemed to be situated at the place where such property, notes, currency or documents are located at the time of death, or, if *in transitu*, at the place of destination;
- (c) Debts, secured or unsecured and whether under seal or not, excluding the forms of indebtedness for which specific provision is made herein, shall be deemed to be situated at the place where the debtor was resident at the time of death;
- (d) Bank accounts shall be deemed to be situated at the branch at which the account was kept;
- (e) Securities issued by any government, municipality or public authority shall be deemed, if in bearer form, to be situated at the place where they are located at the time of death and, if inscribed or registered, to be situated at the place of inscription or registration;
- (f) Shares, stock, debentures or debenture stock in a company (including any such property held by a nominee, whether the beneficial

ownership is evidenced by scrip certificates or otherwise) shall be deemed to be situated at the place where the company was incorporated;

- (g) Monies payable under a policy of assurance or insurance, whether under seal or not, shall be deemed to be situated at the place where the policy provided that the monies shall be payable or, in the absence of any such provision, at the head office of the company;
- (h) Shares in a partnership shall be deemed to be situated at the place where the business is principally carried on;
- (i) Ships and aircraft and shares thereof shall be deemed to be situated at the place of registration of the ship or aircraft;
- (j) Goodwill as a trade, business or professional asset shall be deemed to be situated at the place where the trade, business or profession to which it pertains is carried on;
- (k) Patents, trade marks and designs shall be deemed to be situated at the place where they are registered;
- (l) Copyright, franchises, and rights or licences to use any copyrighted material, patent, trade mark or design shall be deemed to be situated at the place where the rights arising therefrom are exerciseable;
- (m) Rights or causes of action *ex delicto* surviving for the benefit of an estate of a deceased person shall be deemed to be situated at the place where such rights or causes of action arose;
- (n) Judgment debts shall be deemed to be situated at the place where the judgment is recorded;

Provided that if, apart from this paragraph, duty would be imposed by one Contracting Government on any property which is situated in its territory and passes under a disposition not governed by its law, this paragraph shall not apply to such property unless, by reason of its application or otherwise, duty is imposed or would but for some specific exemption be imposed thereon by the other Contracting Government.

ARTICLE IV

(1) In determining the amount on which duty is to be computed, permitted deductions shall be allowed in accordance with the law in force in the territory in which the duty is imposed.

(2) Where duty is imposed by one Contracting Government on the death of a person who was not domiciled at the time of his death in any part of the territory of that Contracting Government but was domiciled in some part of the territory of the other Contracting Government, no account shall be taken, in determining the amount or rate of the duty so imposed, of property situated outside the former territory: provided that this paragraph shall not apply as respects duty imposed in Great Britain in the case of property passing under a disposition governed by the law of Great Britain.

ARTICLE V

(1) Where one Contracting Government imposes duty by reason of a deceased person being domiciled in some part of its territory at the time of his death, that Contracting Government shall allow against so much of its duty (as otherwise computed) as is attributable to property situated in the territory of the other Contracting Government a credit (not exceeding

the amount of the duty so attributable) equal to so much of the duty imposed in the territory of the other Contracting Government as is attributable to such property.

(2) Where Great Britain imposes duty on property passing under a disposition governed by its law, that Contracting Government shall allow a credit similar to that provided by the preceding paragraph of this Article.

(3) Where each Contracting Government imposes duty on any property which is deemed under Article III to be situated outside the territories of both Contracting Governments, each Contracting Government shall allow against so much of its duty (as otherwise computed) as is attributable to the property, a credit which bears the same proportion to the amount of its duty so attributable or to the amount of the other Contracting Government's duty attributable to the same property, whichever is the less, as the former amount bears to the sum of both amounts.

(4) For the purposes of this Article, the amount of the duty of a Contracting Government attributable to any property shall be ascertained after taking into account any credit, allowance or relief, or any remission or reduction of duty, otherwise than in respect of duty payable in the territory of the other Contracting Government.

ARTICLE VI

(1) Any claim for a credit or for a refund of duty founded on the provisions of the present Agreement shall be made within six years from the date of the death of the deceased person in respect of whose estate the claim is made, or, in the case of a reversionary interest where payment of duty is deferred until the date on which the interest falls into possession, within six years from that date.

(2) Any such refund shall be made without payment of interest on the amount so refunded.

ARTICLE VII

(1) The taxation authorities of the Contracting Governments shall exchange such information (being information available under the respective taxation laws of the Contracting Governments) as is necessary for carrying out the provisions of the present Agreement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the duties which are the subject of the present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the duties which are the subject of the present Agreement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this Article, the term "taxation authorities" means, in the case of Great Britain, the Commissioners of Inland Revenue or their authorised representative; in the case of Canada, the Minister of National Revenue or his authorised representative; in the case of Northern Ireland (to which the present Agreement applies under Article IX) the Minister of Finance or his authorised representative; and, in the case of any territory to which the present Agreement is extended under Article VIII, the competent authority for the administration in such territory of the duties to which the present Agreement applies.

ARTICLE VIII

(1) Either of the Contracting Governments may, on the coming into force of the present Agreement or at any time thereafter while it continues in force, by a written notification of extension given to the other Contracting Government, declare its desire that the operation of the present Agreement shall extend, subject to such modifications as may be necessary, to all or any of its colonies, overseas territories, protectorates, or territories in respect of which it exercises a mandate or trusteeship, which impose duties substantially similar in character to those which are the subject of the present Agreement. The present Agreement shall, subject to such modifications (if any) as may be specified in the notification, apply to the territory or territories named in such notification as to the estates of persons dying on or after the date or dates specified in the notification (not being less than sixty days from the date of the notification) or, if no date is specified in respect of any such territory, on or after the sixtieth day after the date of such notification, unless, prior to the date on which the Agreement would otherwise become applicable to a particular territory, the Contracting Government to whom notification is given shall have informed the other Contracting Government in writing that it does not accept the notification as to that territory. In the absence of such extension, the present Agreement shall not apply to any such territory.

(2) At any time after the expiration of one year from the entry into force of an extension under paragraph (1) of this Article, either of the Contracting Governments, may, by written notice of termination given to the other Contracting Government, terminate the application of the present Agreement to any territory to which it has been extended under paragraph (1), and in that event the present Agreement shall cease to apply as to the estates of persons dying on or after the date or dates (not being earlier than the sixtieth day after the date of such notice) specified in such notice, or, if no date is specified, on or after the sixtieth day after the date of such notice, to the territory or territories named therein, but without affecting its continued application to Great Britain, Canada, or to any other territory to which it has been extended under paragraph (1) hereof.

(3) In the application of the present Agreement in relation to any territory to which it is extended by the United Kingdom or Canada, references to "Great Britain" or, as the case may be, "Canada", or to the territory of one (or of the other) Contracting Government, shall be construed as references to the first mentioned territory.

(4) The provisions of the preceding paragraphs of this Article shall apply to the Channel Islands and the Isle of Man as if they were colonies of the United Kingdom.

ARTICLE IX

The present Agreement shall apply in relation to the estate duty imposed in Northern Ireland as it applies in relation to the estate duty imposed in Great Britain, but shall be separately terminable in respect of Northern Ireland by the same procedure as is laid down in paragraph (2) of Article VIII.

ARTICLE X

The present Agreement shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and Canada as are necessary to give the Agreement the force of law in the United Kingdom and Canada respectively,³ and the Agreement shall be effective only as to—

- (a) the estates of persons dying on or after that date; and
- (b) the estate of any person dying before that date and after the 31st day of December, 1944, whose personal representative elects, in such manner as may be prescribed, that the provisions of the present Agreement shall be applied to his estate.

ARTICLE XI

(1) The present Agreement shall remain in force for not less than three years after the date of its coming into force.

(2) If not less than six months before the expiration of such period of three years, neither of the Contracting Governments shall have given to the other Contracting Government written notice of its intention to terminate the present Agreement, the Agreement shall remain in force after such period of three years until either of the Contracting Governments shall have given written notice of such intention, in which event the present Agreement shall not be effective as to the estates of persons dying on or after the date (not being earlier than the sixtieth day after the date of such notice) specified in such notice, or, if no date is specified, on or after the sixtieth day after the date of such notice.

(d) SOUTH AFRICA

**THE DOUBLE TAXATION RELIEF (ESTATE DUTY) (SOUTH AFRICA)
ORDER, 1947**

(S.R. & O., 1947, No. 314)

1. This Order may be cited as the Double Taxation Relief (Estate Duty) (South Africa) Order, 1947.

2. It is hereby declared—

- (a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with His Majesty's Government in the Union of South Africa with a view to affording relief from double taxation in relation to estate duty payable under the laws of the United Kingdom and duty of a similar character imposed under the laws of South Africa; and
- (b) that it is expedient that those arrangements should have effect.

³ The Agreement was given the force of law by both of the Contracting Governments on November 6, 1946.

SCHEDULE

AGREEMENT BETWEEN HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM AND HIS MAJESTY'S GOVERNMENT IN THE UNION OF SOUTH AFRICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO ESTATE DUTY.

His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and His Majesty's Government in the Union of South Africa, desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to estate duty, have agreed as follows:—

ARTICLE I

- (1) The duties which are the subject of the present Agreement are—
 - (a) In the United Kingdom of Great Britain and Northern Ireland, the estate duty imposed in Great Britain, and
 - (b) In the Union of South Africa, the estate duty imposed by the Union.
- (2) The present Agreement shall also apply to any other duties of a substantially similar character imposed by either Contracting Government subsequently to the date of signature of the present Agreement or by the Government of any territory to which the present Agreement applies under Article VIII or IX.

ARTICLE II

- (1) In the present Agreement, unless the context otherwise requires—
 - (a) The term "Great Britain" means England, Wales and Scotland, and does not include the Channel Islands or the Isle of Man.
 - (b) The term "Union" means the Union of South Africa.
 - (c) The term "territory", when used in relation to one or the other Contracting Government, means Great Britain or the Union, as the context requires.
 - (d) The term "duty" means the estate duty imposed in Great Britain or the estate duty imposed by the Union, as the context requires.
- (2) In the application of the provisions of the present Agreement by one of the Contracting Governments, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Government relating to the duties which are the subject of the present Agreement.

ARTICLE III

- (1) For the purposes of the present Agreement, the question whether a deceased person was at the time of his death domiciled in any part of Great Britain or ordinarily resident in any part of the Union shall be determined in accordance with the laws in force in Great Britain and the Union respectively.
- (2) Where a person was at the time of his death domiciled in any part of Great Britain or ordinarily resident in any part of the Union, then as regards Great Britain the situs of any of the following rights and interests, legal or equitable, which for the purposes of duty form part of the estate of such person or pass on his death, shall, for the purposes of the imposition of duty, be determined exclusively in accordance with the following rules, and as regards the Union duty may be imposed on any of the following rights or interests which are deemed under those rules to be situated in its

territory, but shall not be imposed on any of the said rights or interests which are deemed to be situated outside its territory unless such person was at the time of his death ordinarily resident in some part of its territory:—

- (a) Rights or interests (otherwise than by way of security) in or over immovable property shall be deemed to be situated at the place where such property is located;
- (b) Rights or interests (otherwise than by way of security) in or over tangible movable property, other than such property for which specific provision is hereinafter made, and in or over bank or currency notes, other forms of currency recognised as legal tender in the place of issue, negotiable bills of exchange and negotiable promissory notes, shall be deemed to be situated at the place where such property, notes, currency or documents are located at the time of death, or, if *in transitu*, at the place of destination;
- (c) Debts, secured or unsecured, including securities issued by any government, municipality or public authority, and debentures and debenture stock issued by any company or corporation, but excluding the forms of indebtedness for which specific provision is made herein, shall be deemed to be situated in Great Britain if the deceased was at the time of his death domiciled in some part of Great Britain, and in the Union if the deceased was at the time of his death ordinarily resident in some part of the Union;
- (d) Shares or stock in a company (including shares or stock held by a nominee where the beneficial ownership is evidenced by scrip certificates or otherwise) shall be deemed to be situated at the place where such company was incorporated;
- (e) Monies payable under a policy of assurance or insurance on the life of the deceased person shall be deemed to be situated in Great Britain if the deceased was at the time of his death domiciled in some part of Great Britain, and in the Union if the deceased was at the time of his death ordinarily resident in some part of the Union;
- (f) Ships and aircraft and shares thereof shall be deemed to be situated at the place of registration of the ship or aircraft;
- (g) Goodwill as a trade, business or professional asset shall be deemed to be situated at the place where the trade, business or profession to which it pertains is carried on;
- (h) Patents, trade marks and designs shall be deemed to be situated at the place where they are registered;
- (i) Copyright, franchises, and rights or licences to use any copyrighted material, patent, trade mark or design shall be deemed to be situated at the place where the rights arising therefrom are exercisable;
- (j) Rights or causes of action *ex delicto* surviving for the benefit of an estate of a deceased person shall be deemed to be situated at the place where such rights or causes of action arose;
- (k) Judgment debts shall be deemed to be situated at the place where the judgment is recorded;

Provided that if, apart from this paragraph, duty would be imposed by one Contracting Government on any property, this paragraph shall not apply to such property unless, by reason of its application or otherwise, duty is imposed or would but for some specific exemption be imposed thereon by the other Contracting Government.

ARTICLE IV

(1) In determining the amount on which duty is to be computed, permitted deductions shall be allowed in accordance with the law in force in the territory in which the duty is imposed.

(2) Where duty is imposed in Great Britain on the death of a person who was not domiciled in any part of Great Britain but was ordinarily resident in some part of the Union, or where duty is imposed in the Union on the death of a person who was not ordinarily resident in any part of the Union but was domiciled in some part of Great Britain, no account shall be taken, in determining the amount or rate of the duty so imposed, of property which is deemed under paragraph (2) of Article III to be situated outside the territory of the Contracting Government imposing such duty: provided that this paragraph shall not apply as respects duty imposed in Great Britain in the case of property passing under a disposition governed by the law of Great Britain.

ARTICLE V

(1) Where each Contracting Government imposes duty on any property on the death of a person who at the time of his death was—

(a) domiciled in some part of Great Britain but not ordinarily resident in any part of the Union, or

(b) ordinarily resident in some part of the Union but not domiciled in any part of Great Britain,

the Contracting Government in some part of whose territory such person was so domiciled or ordinarily resident shall allow against so much of its duty (as otherwise computed) as is attributable to that property a credit (not exceeding the amount of the duty so attributable) equal to so much of the duty imposed in the territory of the other Contracting Government as is attributable to such property.

(2) Where each Contracting Government imposes duty on property on the death of a person who at the time of his death was domiciled in some part of Great Britain and ordinarily resident in some part of the Union—

(a) in the case of any property which is deemed under paragraph (2) of Article III to be situated in the territory of one only of the Contracting Governments, the other Contracting Government shall allow against so much of its duty (as otherwise computed) as is attributable to that property a credit (not exceeding the amount of the duty so attributable) equal to so much of the duty imposed in the territory of the first mentioned Contracting Government as is attributable to such property;

(b) in the case of any other property each Contracting Government shall allow against so much of its duty (as otherwise computed) as is attributable to the property a credit which bears the same proportion to the amount of its duty so attributable or to the amount of the other Government's duty attributable to the same property, whichever is the less, as the former amount bears to the sum of both amounts.

(3) For the purposes of this Article, the amount of the duty of a Contracting Government attributable to any property shall be ascertained after taking into account any credit, allowance or relief, or any remission or reduction of duty, otherwise than in respect of duty payable in the territory of the other Contracting Government.

(4) The allowance by the Union under this Article of a credit for duty imposed in Great Britain in respect of any property shall be subject to the condition that no deduction in respect of the duty so imposed shall be made for the purpose of determining the amount of the estate on which duty is chargeable in the Union.

ARTICLE VI

(1) Any claim for a credit or for a refund of duty founded on the provisions of the present Agreement shall be made within six years from the date of the death of the deceased person in respect of whose estate the claim is made, or, in the case of a reversionary interest where liability for payment of duty is deferred until the date on which the interest falls into possession, within six years from that date.

(2) Any such refund shall be made without payment of interest on the amount so refunded.

ARTICLE VII

(1) The taxation authorities of the Contracting Governments shall exchange such information (being information available under the respective taxation laws of the Contracting Governments) as is necessary for carrying out the provisions of the present Agreement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the duties which are the subject of the present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the duties which are the subject of the present Agreement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this Article, the term "taxation authorities" means, in the case of Great Britain, the Commissioners of Inland Revenue or their authorised representative; in the case of the Union, the Commissioner for Inland Revenue or his authorised representative; in the case of Northern Ireland (to which the present Agreement applies under Article IX) the Minister of Finance or his authorised representative; and, in the case of any territory to which the present Agreement is extended under Article VIII, the competent authority for the administration in such territory of the duties to which the present Agreement applies.

ARTICLE VIII

(1) Either of the Contracting Governments may, on the coming into force of the present Agreement or at any time thereafter while it continues in force, by a written notification of extension given to the other Contracting Government, declare its desire that the operation of the present Agreement shall extend, subject to such modification as may be necessary, to all or any of its colonies, overseas territories, protectorates, or territories in respect of which it exercises a mandate or trusteeship, which impose duties substantially similar in character to those which are the subject of the present Agreement. The present Agreement shall, subject to such modifications (if any) as may be specified in the notification, apply to the territory or territories named in such notification as to the estates of persons dying on or after the date or dates specified in the notification (not being less than sixty days from the date of the notification) or, if no date is

specified in respect of any such territory, on or after the sixtieth day after the date of such notification, unless, prior to the date on which the Agreement would otherwise become applicable to a particular territory, the Contracting Government to whom notification is given shall have informed the other Contracting Government in writing that it does not accept the notification as to that territory. In the absence of such extension, the present Agreement shall not apply to any such territory.

(2) At any time after the expiration of one year from the entry into force of an extension under paragraph (1) of this Article, either of the Contracting Governments may, by written notice of termination given to the other Contracting Government, terminate the application of the present Agreement to any territory to which it has been extended under paragraph (1), and in that event the present Agreement shall cease to apply as to the estates of persons dying on or after the date or dates (not being earlier than the sixtieth day after the date of such notice) specified in such notice, or, if no date is specified, on or after the sixtieth day after the date of such notice, to the territory or territories named therein, but without affecting its continued application to Great Britain, the Union or to any other territory to which it has been extended under paragraph (1) hereof.

(3) In the application of the present Agreement in relation to any territory to which it is extended by the United Kingdom or the Union, references to "Great Britain", or, as the case may be, "the Union", or to the territory of one (or of the other) Contracting Government, shall be construed as references to that territory.

(4) The provisions of the preceding paragraphs of this Article shall apply to the Channel Islands and the Isle of Man as if they were colonies of the United Kingdom.

ARTICLE IX

The present Agreement shall apply in relation to the estate duty imposed in Northern Ireland as it applies in relation to the estate duty imposed in Great Britain, but shall be separately terminable in respect of Northern Ireland by the same procedure as is laid down in paragraph (2) of Article VIII.

ARTICLE X

The present Agreement shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and the Union as are necessary to give the Agreement the force of law in the United Kingdom and the Union respectively,⁴ and the Agreement shall be effective only as to the estates of persons dying on or after that date.

ARTICLE XI

(1) The present Agreement shall remain in force for not less than three years after the date of its coming into force.

(2) If not less than six months before the expiration of such period of three years neither of the Contracting Governments shall have given to the other Contracting Government written notice of its intention to terminate the present Agreement, the Agreement shall remain in force after such

⁴ The Agreement was given the force of law by both Contracting Governments on the thirteenth day of February, nineteen hundred and forty-seven.

period of three years until either of the Contracting Governments shall have given written notice of such intention, in which event the present Agreement shall not be effective as to the estates of persons dying on or after the date (not being earlier than the sixtieth day after the date of such notice) specified in such notice, or, if no date is specified, on or after the sixtieth day after the date of such notice.

(e) NETHERLANDS

THE DOUBLE TAXATION RELIEF (ESTATE DUTY) (NETHERLANDS)
ORDER, 1950

(S.I. 1950, No. 1197)

1. This Order may be cited as the Double Taxation Relief (Estate Duty) (Netherlands) Order, 1950.

2. It is hereby declared—

(a) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with Her Majesty the Queen of the Netherlands with a view to affording relief from double taxation in relation to estate duty payable under the laws of the United Kingdom and succession duty leviable on or by reference to death imposed under the laws of the Netherlands; and

(b) that it is expedient that those arrangements should have effect.

SCHEDULE

CONVENTION BETWEEN HIS MAJESTY IN RESPECT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND HER MAJESTY THE QUEEN OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO DUTIES ON THE ESTATES OF DECEASED PERSONS.

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, and Her Majesty the Queen of the Netherlands,
Desiring to conclude a Convention for the avoidance of double taxation with respect to duties on property passing on the deaths of deceased persons,

Have appointed for that purpose as their Plenipotentiaries:

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas:

For the United Kingdom of Great Britain and Northern Ireland:
The Right Honourable Ernest Bevin, M.P., His Principal Secretary of State for Foreign Affairs;

Her Majesty the Queen of the Netherlands:

For the Kingdom of the Netherlands:

His Excellency Jonkheer E. Michiels van Verduynen, Her Ambassador Extraordinary and Plenipotentiary in London;

Who, having exhibited their respective full powers, found in good and due form, have agreed as follows:—

ARTICLE I

(1) The duties which are the subject of the present Convention are:

(a) In the United Kingdom, the estate duty imposed in Great Britain, and

(b) In the Netherlands, the succession duty imposed in the Netherlands.

(3) The present Convention shall also apply to any other duties substantially similar in character to either duty which may be imposed in Great Britain or the Netherlands subsequently to the date of signature of the present Convention or in any territory to which the present Convention applies under Article VII.

ARTICLE II

(1) In the present Convention, unless the context otherwise requires:

(a) The term "United Kingdom" means Great Britain and Northern Ireland.

(b) The term "Great Britain" means England, Wales and Scotland and does not include the Channel Islands or the Isle of Man.

(c) The term "Netherlands" means the Kingdom of the Netherlands in Europe.

(d) The term "territory", when used in relation to one or the other High Contracting Party, means Great Britain or the Netherlands, as the context requires.

(e) The term "duty" means the estate duty imposed in Great Britain or the succession duty imposed in the Netherlands, as the context requires.

(2) In the application of the provisions of the present Convention by one of the High Contracting Parties, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that Party relating to the duties which are the subject of the present Convention.

ARTICLE III

(1) For the purposes of the present Convention, the question whether a deceased person was domiciled in any part of the territory of one of the High Contracting Parties at the time of his death shall be determined in accordance with the law in force in that territory.

(2) Where a person dies domiciled in any part of the territory of one High Contracting Party, the situs of any of the following rights or interests, legal or equitable, which for the purpose of duty form or are deemed to form part of the estate of such person or pass or are deemed to pass on his death, shall, for the purposes of the imposition of duty, be determined exclusively in accordance with the following rules, but in

cases not within such rules the situs of such rights or interests shall be determined for these purposes in accordance with the laws in force in the territory of the other High Contracting Party:

- (a) Rights or interests (otherwise than by way of security) in or over immovable property shall be deemed to be situated at the place where such property is located;
- (b) Rights or interests (otherwise than by way of security) in or over tangible movable property, other than such property for which specific provision is hereinafter made, and in or over bank or currency notes, other forms of currency recognised as legal tender in the place of issue, negotiable bills of exchange and negotiable promissory notes, shall be deemed to be situated at the place where such property, notes, currency or documents are located at the time of death, or, if *in transitu*, at the place of destination;
- (c) Debts, secured or unsecured, including securities issued by any government, municipality or public authority, and debentures and debenture stock issued by any company, but excluding the forms of indebtedness for which specific provision is made herein, shall be deemed to be situated at the place where the deceased person was domiciled at the time of his death;
- (d) Shares or stock in a company (including shares or stock held by a nominee, whether the beneficial ownership is evidenced by scrip certificates or otherwise) shall be deemed to be situated at the place in or under the laws of which the company was incorporated;
- (e) Monies payable under a policy of assurance or insurance shall be deemed to be situated at the place where the deceased person was domiciled at the time of his death;
- (f) Ships and aircraft and shares thereof shall be deemed to be situated at the place of registration of the ship or aircraft;
- (g) Goodwill as a trade, business or professional asset shall be deemed to be situated at the place where the trade, business or profession to which it pertains is carried on;
- (h) Patents, trade marks and designs shall be deemed to be situated at the place where they are registered;
- (i) Copyright, franchises, and rights or licences to use any copyrighted material, patent, trade mark or design shall be deemed to be situated at the place where the rights arising therefrom are exercisable;
- (j) Rights or causes of action *ex delicto* surviving for the benefit of an estate of a deceased person shall be deemed to be situated at the place where such rights or causes of action arose;
- (k) Judgment debts shall be deemed to be situated at the place where the judgment is recorded:

provided that if, apart from this paragraph, duty would be imposed in the territory of one High Contracting Party on any property which is situated therein, and passes under a disposition not governed by the law in force therein, this paragraph shall not apply to such property, unless, by reason of its application or otherwise, duty is imposed or would but for some specific exemption be imposed thereon in the territory of the other High Contracting Party.

ARTICLE IV

(1) In determining the amount on which duty is to be computed, permitted deductions shall be allowed in accordance with the law in force in the territory in which the duty is imposed.

(2) Where duty is imposed in the territory of one High Contracting Party on the death of a person who at the time of his death was not domiciled in any part of that territory but was domiciled in any part of the territory of the other High Contracting Party, no account shall be taken, in determining the amount or rate of such duty, of property situated outside the former territory:

provided that this paragraph shall not apply as respects duty imposed:

(a) in the Netherlands in the case of a person of Netherlands nationality who, having relinquished his domicile in the Netherlands within ten years of his death, died domiciled in any part of Great Britain; or

(b) in Great Britain in the case of property passing under a disposition governed by the law of Great Britain.

ARTICLE V

(1) Any claim for a refund of duty founded on the provisions of the present Convention shall be made within six years from the date of the death of the deceased person in respect of whose estate the claim is made, or, in the case of an interest in expectancy where payment of duty is deferred until the date on which the interest falls into possession, within six years from that date.

(2) Any such refund shall be made without payment of interest on the amount so refunded.

ARTICLE VI

(1) The present Convention may be extended, either in its entirety or with modifications, to any territory of one of the High Contracting Parties to which this Article applies and which imposes duties substantially similar in character to those which are the subject of the present Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the High Contracting Parties in notes to be exchanged for this purpose.

(2) The termination in respect of the Netherlands or the United Kingdom of the present Convention under Article IX shall, unless otherwise expressly agreed by both High Contracting Parties, terminate the application of the present Convention to any territory to which the Convention has been extended under this Article.

(3) The territories to which this Article applies are:

(a) in relation to His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas:

Any territory other than the United Kingdom for whose foreign relations the United Kingdom is responsible.

(b) in relation to Her Majesty the Queen of the Netherlands:

Any territory other than the Netherlands for whose foreign relations the Netherlands is responsible.

ARTICLE VII

The present Convention shall apply in relation to the estate duty imposed in Northern Ireland as it applies in relation to the estate duty imposed in Great Britain, but shall be separately terminable in respect of Northern Ireland subject to such conditions as may be specified and agreed between the High Contracting Parties in notes to be exchanged for this purpose.

ARTICLE VIII

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at London as soon as possible.

(2) The present Convention shall be effective only as to the property passing on the deaths of persons dying on or after the first day of July, 1948.

ARTICLE IX

The present Convention shall continue in effect indefinitely, but either of the High Contracting Parties may, on or before the 30th June in any calendar year not earlier than the year 1952, give to the other High Contracting Party, through diplomatic channels, written notice of termination and, in such event, the present Convention shall cease to be effective as to the property passing on the deaths of persons dying on or after the date (not being less than sixty days after the date of such notice) specified in such notice, or, if no date is specified, on or after the sixtieth day after the date of such notice.

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